



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

SECOND SECTION

CASE OF KOKAVECZ v. HUNGARY

(Application no. 39138/05)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

15/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kokavec v. Hungary,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos,

Guido Raimondi, *judges*,

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

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 39138/05) 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 Kokavec (“the applicant”), on 6 October 2005.

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

3. On 25 August 2009 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 applicant was born in 1959 and lives in Békéscsaba.

5. The applicant's previous application (no. 27312/95) was declared inadmissible by a Chamber on 20 April 1999. The subject matter of that case was the prosecution of the applicant, in the course of which he was arrested on a charge of incitement to murder on 21 March 1994. On 29 February 1996 the Békés County Regional Court acquitted him of this

charge but convicted him of an abuse of firearms. On 29 January 1997 the Supreme Court re-qualified his offence as an abuse of ammunition and reduced his sentence. On 9 December 2002 the Supreme Court's review bench acquitted the applicant of the latter charge. Meanwhile, on 29 January 1999 the Regional Court had ordered the applicant's retrial and found him guilty of incitement to murder. On 11 January 2000 the Supreme Court's appeal bench quashed this decision and remitted the case. In the resumed proceedings, on 22 April 2002 the Pest County Regional Court held that there was no reason to retry the applicant and upheld his earlier acquittal.

6. Meanwhile, on 29 July 1997 the applicant brought a civil action in compensation against the State for unjustified detention and a miscarriage of justice. The Békés County Regional Court suspended the case in 1998 pending the final outcome of the criminal case outlined in the preceding paragraph. After the Supreme Court's decision of 9 December 2002, the Regional Court resumed the proceedings in February 2003 and gave judgment on 19 October 2004. On appeal, on 22 April 2005 the Szeged Court of Appeal reversed this decision, increased the compensation payable to the applicant to 15,190,000 Hungarian forints (HUF) plus accrued interest, and reduced the procedural fees payable by him. On 1 September 2005 the Supreme Court dismissed his petition for review.

THE LAW

7. The applicant complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. The Government contested that argument, submitting that the suspension of the proceedings, a measure in place for some four years, was inevitable in the circumstances, and its duration should be deducted from the overall length.

8. The Court observes that the criminal proceedings, with regard to which the applicant's action in compensation was suspended between 1998 and early 2003, themselves lasted over eight years and eight months for three levels of jurisdiction. For the Court, this duration alone raises concerns, even in a complex murder case. Consequently, the necessity to suspend the case pending those criminal proceedings cannot exculpate the authorities for the protraction of the applicant's action in compensation.

9. Accordingly, the period to be taken into consideration began on 29 July 1997 and ended on 1 September 2005. It thus lasted eight years and one month for three levels of jurisdiction. In view of such lengthy proceedings, this complaint must be declared admissible.

10. 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, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). 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 considers 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.

11. The applicant also complained in essence that the award he received (see paragraph 6 above) was insufficient; in this connection he relied on Articles 5 § 5, 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7. For the Court, the applicant, having received substantial compensation, can no longer claim to be a victim in this respect. Moreover, the applicant complained under Article 4 of Protocol No. 7 that the criminal proceedings conducted against him included a retrial, which in his view had been unjustified in the circumstances. In this connection, the Court observes that the criminal proceedings ended in 2002, i.e. more than six months before the date of introduction. It follows that these complaints must be rejected, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

12. Relying on Article 41 of the Convention, the applicant claimed HUF 4,509,815,000 in respect of pecuniary damage and HUF 100,000,000 in respect of non-pecuniary damage. The Government contested these claims. 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 applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,200 under that head.

13. The applicant also claimed HUF 5,000,000 for the costs and expenses incurred before the domestic courts and the Court. The Government contested the claim.

14. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

15. 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 complaint concerning the excessive length of the proceedings 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 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, to be converted into Hungarian forints at the rate applicable at the date of settlement:
 - (i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President