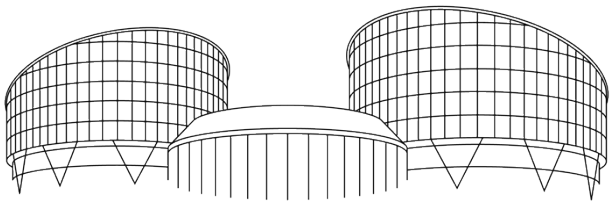

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 61053/12
Attila CSORBA
against Hungary

The European Court of Human Rights (Second Section), sitting on 12 February 2013 as a Committee composed of:

Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

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

Having regard to the above application lodged on 13 September 2012,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Attila Csorba, is a Hungarian national, who was born in 1969 and lives in Budapest. He was represented before the Court by Mr Zs. Zétényi, a lawyer practising in Budapest.

A. The circumstances of the case

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

On 23 October 2006 – a national holiday in Hungary in remembrance of the 1956 revolution – demonstrations and riots took place in Budapest. As the protest became violent, the police intervened in order to restore peace. The applicant, who happened to be where the events took place, got hit by a rubber bullet fired by the police forces which attempted to disperse the

crowd. As a consequence, he suffered a fracture of the skull base and lost his left eye, becoming permanently disabled.

He lodged a criminal complaint for mistreatment in official proceedings and for grievous bodily harm. On 8 June 2007 the Budapest Investigation Authority discontinued the investigations. It relied on testimonies obtained from numerous witnesses, the opinions of a forensic weapons expert and a medical expert as well as documentary evidence. It established that, on the day of the incident, previously unannounced protests had taken place in the centre of Budapest. The rioters threw cobble stones and Molotov cocktails at the police squads. Following several unsuccessful attempts to disperse the crowd peacefully, the police eventually started using tear gas, rubber bullets, truncheons and water cannons; mounted officers were also engaged. These measures were found to be in compliance with the dispositions of the Police Act. The applicant was hit by a rubber bullet in the area where the police was performing riot control. The Investigation Authority established that an unidentified police officer had thus committed involuntary grievous bodily harm. The Authority concluded that the police officer injuring the applicant had not shown the requisite diligence. However, the identification of the perpetrator was not possible as several police officers had weapons with rubber bullets, and the bullets were not identifiable. As regards the complaint about mistreatment in official proceedings, the Authority found that the police had performed a lawful operation with lawful measures, therefore any injury thus caused could not be considered as a criminal act.

The applicant lodged a complaint against this decision with the Budapest Chief Prosecutor's Office. On 11 July 2007 it dismissed his complaint. It found that the Investigation Authority's decision had been in compliance with the law. It held that it could not be established whether the applicant had been hit with a targeted shot or accidentally, and that testimonies of further witnesses would not be capable of leading to the identification of the responsible officer. The applicant did not pursue private prosecution to challenge this decision.

On 3 December 2008 the applicant and the police authority made a partial settlement. The police acknowledged their liability for the damages caused and paid the applicant 4,400,000 Hungarian forints (HUF) (approx. 15,408 euros (EUR)) in compensation.

On 8 January 2009 the applicant nevertheless initiated an action in compensation against the police before the Budapest Regional Court, requesting the court to establish a violation of his personality rights. On 28 January 2011 it found for him in part, ordering the respondent to pay him an additional HUF 10,600,000 (approx. EUR 37,115). It dismissed a further claim for a monthly allowance, holding that lump sum compensation – rather than a monthly allowance – was more appropriate in his case, as no change could be expected in his health and because these forms of compensation were found to be mutually exclusive under the law.

Moreover, the court observed that it had been for the applicant to prove that his income after the incident did not reach the level prior to it. However, he failed to provide any evidence as to how much he had earned before the incident – that is, until he had quitted his permanent job in 2005 or after in the occasional jobs he had had in the period just before the incident – and thus it was impossible to determine how much loss of income the incident had caused.

The Budapest Court of Appeal upheld this decision on 5 July 2011. The applicant lodged a petition for review with the Supreme Court, which upheld the Court of Appeal's decision on 27 June 2012.

COMPLAINTS

Relying on Article 2, the applicant complained about the life-threatening injury caused by the police forces and that the perpetrator had not been identified. Moreover, relying on Article 3, he complained that due to the police authorities' action, he became permanently disabled, had to undergo a series of painful operations and became depressed. Relying on Article 6, he further complained about the outcome and alleged unfairness of the civil proceedings. Finally, relying on Article 11 of the Convention, he complained that the authorities had violated his right as he was injured by the police as a member of a crowd gathered to celebrate the national holiday.

THE LAW

1. The applicant complains, relying on Article 2 of the Convention, about the life-threatening injury caused by the police forces. Moreover, he complains under Article 3 of the Convention that due to the police authorities' action, he became permanently disabled, had to undergo a series of painful operations and became depressed.

The Court points out that the authorities, first having carried out an investigation in no way falling short of the relevant requirements, acknowledged their responsibility and settled the case with the applicant, paying him a large sum of money. Moreover, his additional court claims were likewise largely successful. Altogether, over EUR 52,000 were paid to him in compensation – and this notwithstanding the fact that the actual shooter could not be identified. The Court further notes that the domestic courts rejected the applicant's additional claim for an allowance because they regarded such an allowance as an alternative to lump sum compensation and because the applicant had failed to prove his loss of

income. Moreover, there is nothing in the case-file indicating that the applicant, if his condition so requires, would be excluded from any social allowance normally available to those with comparable disabilities.

Against this background, the Court finds that the applicant obtained adequate redress for the alleged violation of his right under Articles 2 and 3 of the Convention. Accordingly, in this connection, he can no longer claim to be victim, for the purposes of Article 34, of a violation of Articles 2 and 3. This complaint is therefore manifestly ill-founded, within the meaning of Article 35 § 3 (a), and must be rejected, pursuant to Article 35 § 4 of the Convention.

2. The applicant also complains that the authorities failed to carry out a thorough investigation into the events insofar as the perpetrator was not identified.

It is to be observed that this part of the applicant's complaints concerns the procedural limb of Article 3. The Court considers it more appropriate to address the alleged breach of the Article 3 procedural obligation in the context of Article 13 (see *Ilhan v. Turkey* [GC], no. 22277/93, §§ 92-93, ECHR 2000-VII). The Court has previously held that where a right of such fundamental importance as the right to life or the prohibition against ill-treatment is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure (see *Kaya v. Turkey*, judgment of 19 February 1998, Reports 1998-I, pp. 330-331, § 107). Furthermore, in the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (*Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 108-109, ECHR 2001-V).

In the instant case, the Court notes that two prosecution instances examined the applicant's complaints. During these investigations, numerous witnesses were heard. The applicant was also questioned as to his version of the events which had occurred that day. The investigators also appointed a forensic medical expert and a forensic weapons expert to clarify the nature and cause of the applicant's injury. It is to be noted that the criminal proceedings were ultimately closed as it was not possible to identify the exact police officer who fired the rubber bullet injuring the applicant. Nevertheless, as mentioned earlier, the authorities acknowledged their responsibility and settled the case with the applicant, paying him a large sum of money.

For its part, the Court is satisfied that the investigations conducted were thorough and adequate (compare and contrast, for example, *Labita v. Italy* [GC], no. 26772/95, §§ 130-136, ECHR 2000-IV). In these circumstances,

the Court considers that the applicant had available to him an effective remedy in relation to his complaint under Article 3. It follows that this complaint is likewise manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

3. Relying on Article 6 § 1 of the Convention, the applicant also complains about the decisions given by the courts. In so far as this complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court considers that the applicant's submissions do not disclose any elements of arbitrariness and, hence, no appearance of a violation of their rights under Article 6 of the Convention has been demonstrated. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

4. Finally, the applicant also complains, relying on Article 11 of the Convention, about the alleged violation of his right to freedom of assembly, as he was injured during a public gathering celebrating the national holiday. The Court notes that the event took place on 23 October 2006. However, the application was lodged only on 13 September 2012, i.e. more than six months later. It follows that this aspect of the application has been introduced outside the six-month time-limit prescribed by Article 35 § 1 and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President