

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

SECOND SECTION

DECISION

Application no. 32760/10
Zoltán BAUER
against Hungary

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

Peer Lorenzen, *President,*
András Sajó,
Nebojša Vučinić, *judges,*

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

Having regard to the above application lodged on 8 June 2010,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zoltán Bauer, is a Romanian national, who was born in 1969 and lives in Mesztegnyő, Hungary. When introducing the application, he was serving a sentence at Szombathely Prison.

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

On 30 March 2005 the applicant was convicted of forgery of documents and sentenced to one year's imprisonment. He did not report voluntarily to the penitentiary to start serving the sentence. On 10 January 2006 an arrest warrant was issued. He was apprehended on 15 September 2009.

On the basis of an amendment to section 47(4)e) of the Criminal Code, enacted on 9 August 2009, according to which those convicts who had absconded from the service of the sentence were no longer eligible for

parole, on 29 September 2009 the Budapest Regional Court decided to exclude the applicant from the possibility of parole.

The applicant complained to the Attorney General's Penitentiary Supervisory Department that this measure amounted to a retroactive criminal sanction since when he had absconded from serving his sentence, the consequence of forfeiting parole eligibility had not yet been enacted.

In pursuit of the complaint, on 31 March 2010 the Vas Department Chief Prosecutor's Office filed a motion with the Vas County Regional Court, endorsing the applicant's complaint. The prosecutor recalled that the Supreme Court had meanwhile issued a guideline on the issue, according to which the amendment in question was only applicable in cases where the convict's convocation to the commencement of the sentence included a warning about the risk of losing parole eligibility – which was not so in the applicant's case.

On 12 April 2010 the Vas County Regional Court's penitentiary judge upheld the applicant's exclusion from parole, applying the amended rule. It argued in essence that the absconding from the sentence amounted to culpability on the applicant's side and as such was one of the elements to be taken into account when assessing if the convict's conduct earned his release on parole; in this light, the amendment in question did not amount to retroactive criminal legislation.

On appeal, on 14 May 2010 the Regional Court's panel upheld the applicant's exclusion from parole (Bkf.145/2010/2). The applicant's petition for review to the Supreme Court was to no avail.

COMPLAINT

The applicant complained that he had been the victim of retroactive application of the criminal law. He invokes Articles 6, 7, 13 and 14.

PROCEDURE

On 13 March 2012 the Court gave notice of the application to the Hungarian Government.

On 9 July 2012 the Government submitted their observations on the case.

On 27 July 2012 the observations were sent to the applicant (to both his temporary and permanent address) who was given until 7 September 2012 to submit observations in reply.

In the absence of any reply to these communications from the applicant's side, a reminder was sent in a registered letter on 19 December 2012 warning the applicant of the possibility that the case might be struck out of

the Court's list. This letter was returned by the post on 11 January 2013 with the notice that the applicant was not known at the address indicated.

The last communication reaching the Court from the applicant's side dated 24 June 2010.

THE LAW

The Court notes that on 19 December 2012 the applicant was reminded that the period allowed for submission of written observations had expired; and that he was warned of the possibility that the case might be struck out of the Court's list. He did not reply to the Court.

The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Françoise Elens-Passos
Deputy Registrar

Peer Lorenzen
President