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

FOURTH SECTION

DECISION

Application no. 29180/16
Sándor Mihály BODÓ and Tünde HORGOS
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 26 September 2017 as a Committee composed of:

Faris Vehabović, *President,*
Carlo Ranzoni,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 May 2016,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Sándor Mihály Bodó and Ms Tünde Horgos, are Hungarian nationals who were born in 1955 and 1975 respectively and live in Szigethalom. They were represented before the Court by Mr D. Karsai, a lawyer practising in Budapest.

2. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, Ministry of Justice.

A. The circumstances of the case

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

4. The first applicant was diagnosed with lung cancer in 2012 and underwent surgery shortly afterwards. He subsequently requested an allowance for persons with impaired working abilities and was examined by an expert committee in March 2015. However, he did not receive the results of this examination at that time. In the absence of the results, he was not granted the allowance immediately. In order to be able to receive it, the first applicant nevertheless terminated his employment and consequently his health insurance coverage ended in June 2015. His common-law wife, the second applicant, started supporting him and needed to take on two jobs to this end.

5. Subsequent to the interim measure indicated on 31 May 2016 to the respondent Government under Rule 39 of the Rules of Court, the Government instructed the competent authority to process the first applicant's case as a matter of urgency. In pursuit of this measure, on 10 June 2016 the Budapest Government Office established his entitlement to the allowance sought, plus accrued interest, retroactively as of 4 August 2014, this decision being based on an expert examination conducted in 2012. Soon afterwards, the allowance was re-established on the basis of the 2015 examination but the monthly amount remained virtually unchanged. Currently, the first applicant is in receipt of 60,030 Hungarian forints (approximately 200 euros) per month in disability allowance and his health insurance cover has resumed.

COMPLAINTS

6. The first applicant complained under Article 2 of the Convention that the delay in processing his disability claim, entailing the temporary absence of health insurance cover, had posed a risk to his life. Both applicants further complained under Article 8 that the period during which the first applicant had been supported entirely by virtue of the second applicant's income had resulted in an unjustified interference with their private lives.

THE LAW

7. The first applicant complained that the course of action pursued by the authorities fell short of their obligations under Article 2 of the Convention. Moreover, both applicants complained that the delay experienced in the assessment of the first applicant's claim had resulted in existential hardships that amounted to an unjustified interference with their private lives, in breach of Article 8.

In so far as relevant, Article 2 of the Convention provides as follows:

> "1. Everyone's right to life shall be protected by law. ..."

Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

8. The Court, being the master of the characterisation to be given in law to the facts of the case (see, among many other authorities, *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013), considers that the latter issue should also be examined under Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

9. The Government submitted that the first applicant had not exhausted the domestic remedies since he did not have recourse to the supervisory body of the defaulting authority, although he could have done so under section 20(2) of the Act of Administrative Procedure. They also contended that the hardships suffered by the applicants fell outside the sphere of private life as contemplated by Article 8 of the Convention.

10. The applicants contested these views, arguing that the remedy suggested by the Government had not been effective and its application had been vague. On the merits of the case, they insisted that the situation prior to the 2016 measures had been life-threatening and/or inhuman and degrading for the first applicant and that, moreover, the resultant financial hardships had represented inhuman and degrading treatment for the couple as well as an unjustified interference with their private lives.

11. The Court considers that the Government's argument alleging non-exhaustion of domestic remedies does not need to be examined because the application is in any event inadmissible for the following reasons.

12. The Court observes that the assessment of the first applicant's disability claim took a total of some 15 months to complete, between March 2015 and June 2016. It appears that during this period the first applicant, no longer employed in a job offering payroll benefits, was without health insurance cover. However – despite this regrettable delay – the Court must observe that there is no evidence in the case file or in the parties' submissions to suggest that during this period the first applicant was denied any medical treatment that was required to alleviate his condition. Nor has it been substantiated in any relevant manner that the first applicant's access to medication was hindered – or made inordinately

cumbersome – by the impugned circumstances. For the Court, the mere fact that outstanding amounts of disability allowance were not disbursed until June 2016 – but then retroactively and with accrued interest – is not sufficient to bring the case within the realm of Articles 2 or 3 of the Convention.

13. Moreover, the financial hardships encountered by the applicants and represented by the fact that they had to subsist on the second applicant's wages alone, were not, for the Court, of a kind or degree attaining the minimum level of severity required for Article 3 to come into play; nor do they disclose any appearance of a violation of the right to respect for the applicants' private life, as guaranteed by Article 8 of the Convention.

14. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

15. Accordingly, it is appropriate to lift the interim measure indicated under Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Decides to lift the interim measure indicated to the Hungarian Government under Rule 39 of the Rules of Court;

Declares the application inadmissible.

Done in English and notified in writing on 19 October 2017.

Andrea Tamietti
Deputy Registrar

Faris Vehabović
President