

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

SECOND SECTION

DECISION

Application no. 53138/08
Mátyás BORBÉLY
against Hungary

The European Court of Human Rights (Second Section), sitting on 15 January 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 4 November 2008,

Having regard to the declaration submitted by the respondent Government on 18 November 2011 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mátyás Borbély, is a Hungarian national, who was born in 1952 and lives in Kazsok. He was represented before the Court by Ms I. Zárdai, a lawyer practising in Kaposvár.

The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

On 18 July 2001 the applicant brought an action against his former employer before the Pest County District Labour Court, requesting the court to establish the invalidity of the termination of his employment.

On 29 January 2004 the Labour Court accepted most of the applicant's claim, but failed to address the entirety of his claims. The Pest County Regional Court therefore quashed the first-instance decision and remitted the case to the Labour Court on 15 September 2004.

In the resumed proceedings the Labour Court gave judgment on 28 March 2006. This decision was upheld on appeal by the Regional Court on 31 January 2007. The applicant lodged a petition for review with the Supreme Court. It upheld the final judgment on 9 May 2008.

COMPLAINTS

The applicant complained about the length and outcome of the labour proceedings. He relied on Article 6 § 1 of the Convention.

THE LAW

The applicant complained about the length of labour proceedings to which he was a party. He relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 18 November 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government note that the efforts with a view to securing a friendly settlement of the case have been unsuccessful.
>
> In this situation the Government hereby wish to express by way of unilateral declaration its acknowledgement of the unreasonable length of the domestic proceedings in which the applicant was involved.
>
> Consequently, the Government are prepared to pay to Mr Mátyás Borbély 3,100 (three thousand one hundred) euros.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses (inclusive of value-added taxes paid on lawyer's fees), will be converted into the national currency at the rate applicable on the date of payment, and will be free of any further taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

> The Government therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as «any other reason» justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention."

By a letter of 30 December 2011, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Hungary, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list in so far as it concerns the complaint about the length of proceedings.

The applicant also complained under Article 6 § 1 about the outcome of the proceedings. 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 (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court is satisfied that the applicant's submissions do not disclose any appearance that the courts lacked impartiality, or that the proceedings were otherwise unfair or arbitrary. It follows that this part of 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.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as it concerns the complaint about the length of the proceedings;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos	Peer Lorenzen
Deputy Registrar	President