

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

SECOND SECTION

CASE OF CZIMBALEK v. HUNGARY

(Application no. 23123/07)

JUDGMENT

STRASBOURG

24 September 2013

This judgment is final but it may be subject to editorial revision.



In the case of Czimbalek v. Hungary,

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

Peer Lorenzen, *President,*
András Sajó,
Nebojša Vučinić, *judges*
and, Atilla Nalbant*, Acting Deputy Section Registrar,*

Having deliberated in private on 3 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 23123/07) 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 József Czimbalek ("the applicant"), on 24 April 2007.

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

3. On 7 December 2010 the application was communicated to the Government.

4. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946. Currently, he is serving a sentence at Tököl Prison.

6. In late 1999 criminal proceedings were initiated against the applicant, a multiple recidivist, on charges of fraud and other offences. On 19 January 2000 a bill of indictment was preferred. The applicant was detained on remand until 16 May 2003.

7. On 27 February 2004 a hearing was held and the applicant was convicted on nineteen counts of fraud and forgery of documents. This judgment was adopted *in absentia*, since the applicant had absconded.

8. Meanwhile, in another case, the applicant was additionally indicted for aggravated fraud and other offences in late 2003. On 15 September 2004 he was convicted *in absentia*, since he had absconded.

9. On 28 November 2006 the Szolnok District Court imposed on the applicant a cumulative sentence of five years and six months of strict regime imprisonment. This decision was upheld by the Jász-Nagykun-Szolnok County Regional Court, acting as a second-instance court, on 8 February 2008.

10. In autumn 2006 the applicant filed a request for retrial against the conviction of 15 September 2004. Given the conviction *in absentia*, this request was granted on 29 November 2006 by the Regional Court. After several hearings, on 29 November 2007 the applicant was partly acquitted of the charges and his sentence was mitigated in respect of the remainder by the District Court. The amended sentence was included in another cumulative sentence.

11. The applicant did not appeal against this conviction but filed a petition for review. On 27 February 2008 the Supreme Court rejected his petition for review, since it only concerned the findings of fact and the assessment of evidence.

12. Meanwhile, some time later in 2006, the applicant filed a request for retrial against the conviction of 27 February 2004. Given the conviction *in absentia*, this request was granted on 30 November 2006 by the Regional Court. On 8 January 2008 he was partly acquitted of the charges, and his sentence was mitigated in respect of the remainder by the District Court. On appeal, his sentence was further mitigated on 4 November 2008 by the Regional Court.

13. The applicant's further complaints raised before the District Court about the manner in which the cumulative sentence had been calculated appear to have been to no avail.

14. The applicant is presently serving a previous sentence of twelve years, whose probation has been cancelled on account of his intervening new convictions.

THE LAW

15. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

16. The Government contested that argument.

17. The period to be taken into consideration concerning the first set of proceedings began in late 1999, when the investigation started, and lasted until 4 November 2008, when the Regional Court issued a final judgment.

18. From this period of approximately nine year, however, the time corresponding to delays caused by the applicant's non-availability for justice cannot be attributed to the State. In particular, he absconded and was convicted *in absentia* on 27 February 2004, which necessitated retrial. The Court further observes that between the last-mentioned date and 30 November 2006 (the date on which the applicant was granted retrial in this case), that is, for two years and nine months, no criminal proceedings were in progress.

19. After deducting this period from the overall length, the remaining period is six years and three months for two levels of jurisdiction.

20. 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 *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). 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 first set of criminal proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

21. As regards the second set of criminal proceedings, the period to be taken into consideration began in late 2003, when those investigations were opened against the applicant, and ended on 29 November 2007, when the Szolnok District Court issued a final judgment. The Court observes that the time corresponding to the subsequent proceedings before the Supreme Court, which ended on 27 February 2008 resulting in the applicant's petition for review being declared inadmissible, should not be taken into consideration, as that remedy was wholly futile.

22. The Court further notes that between 15 September 2004 (the date of the first judgment issued by the District Court in this case) and 29 November 2006 (the date on which the applicant was granted retrial by the Regional Court), that is, for two years and two months, no criminal proceedings were in progress. The proceedings, thus, lasted one year and ten months for two levels of jurisdiction.

23. In the absence of any particular period of inactivity imputable to the authorities, the overall length of this case cannot be considered as exceeding a "reasonable time" for the purposes of Article 6 § 1. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected, pursuant to Article 35 § 4.

24. As regards the applicant's submissions about the outcome of the criminal proceedings and the manner in which the cumulative sentence was calculated, the Court reiterates that in so far as these complaints may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, 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 considers that there is nothing in the case-file indicating any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary.

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

26. Lastly, as regards the applicant's complaint about the current deprivation of liberty, the Court observes that this measure constitutes "lawful detention of a person after conviction by a competent court" within the meaning of Article 5 § 1 (a) of the Convention. In the absence of any appearance of a violation of the applicant's Convention rights in this connection, this part of the application is likewise manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

27. Relying on Article 41 of the Convention, the applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. The Government contested the claim. The Court considers that the applicant must have sustained some non-pecuniary damage and awards him, on an equitable basis, EUR 2,000 under this head.

28. 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 first 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 EUR 2,000 (two thousand euros) plus any tax that may be chargeable in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 24 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Atilla Nalbant	Peer Lorenzen
Acting Deputy Registrar	President