

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

SECOND SECTION

CASE OF GARZÓ v. HUNGARY

(Application no. 24485/07)

JUDGMENT

STRASBOURG

24 September 2013

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



In the case of Garzó 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. 24485/07) 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 Attila Garzó ("the applicant"), on 14 May 2007.

2. The applicant was represented by Mr Zs. Csáky, a lawyer practising in Nyíregyháza. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. On 5 May 2010 the President of the Second Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Sarkad.

5. On 30 March 1992 criminal proceedings were instituted against the applicant for fencing and other crimes. On 6 December 1994 a bill of indictment was preferred against him and ten others.

6. The Budapest XVIII/XIX District Court held several hearings, at several of which the applicant did not appear. For his absconding, an arrest warrant was issued against him.

7. On 5 October 2007 the District Court convicted the applicant of fencing and forgery of private documents, but refrained from imposing a sentence on him for a two-year probation period. The applicant waived his

right to appeal, so the judgment's reasoning was shortened, and it became final on the same day.

8. On the basis of the same investigation an additional bill of indictment was preferred against the applicant for further accounts of fencing and forgery of private documents on 17 March 1995.

9. After holding several hearings, the Nyíregyháza District Court delivered a judgment on 5 November 1997 which was quashed by the Szabolcs-Szatmár-Bereg County Regional Court on 18 March 1998.

10. The applicant did not appear at several hearings, so an arrest warrant was issued against him.

11. On 6 October 2006 the District Court found the applicant guilty as charged and sentenced him to eight months of imprisonment. Due to the applicant's withdrawal of his appeal, the judgment became final on 25 January 2007.

The extraordinary protraction of the proceedings was mentioned in the judgment as an aggravating circumstance. The Government, however, claimed that the length had actually been taken into account as a weighty mitigating factor.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

13. The Government contested this argument. They argued in particular that the applicant could not be considered as victim, as he had been put on probation and his sentence had been mitigated due to the protraction of the proceedings, therefore providing him sufficient redress. Even though the shortened judgment putting him on probation had not expressly contained the reasons for mitigation, and the other sentence referred to the protraction by clerical mistake as an aggravating factor, the Government highlighted that the protraction of criminal proceedings had been obviously taken into consideration by the trial courts in both cases as a mitigating factor. Finally, the Government considered that the applicant waived his right to appeal against the judgment putting him on probation and therefore also waived his right to an explicit acknowledgment of the protraction of the criminal proceedings against him.

14. The Court recalls that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the

individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; and *Beck v. Norway*, no. 26390/95, § 28, 26 June 2001). However, in the present case, the reasons for mitigation cannot be established with certainty because in one of the cases the trial court delivered a shortened judgment, and in the other proceedings the length appeared in the judgment as an aggravating factor.

15. As regards the absence of appeal against the probation, the Court is unable to share the Government's view on this matter. It cannot be imputed to the applicant that he did not lodge an appeal against the judgment, which would have further contributed to the protraction of the proceedings. The Government's objection must therefore be rejected.

16. The Court observes that the period to be taken into consideration began on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The Court notes that the case had been pending for seven months on that date. The period in question ended on 5 October 2007. It thus lasted altogether fifteen years and six months before two levels of jurisdiction, out of which fourteen years and eleven months following ratification of the Convention by Hungary. In view of such lengthy proceedings, the application must be declared admissible.

17. 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).

18. Having examined all the material submitted to it and despite the fact that the applicant was responsible for some delay, 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 proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

19. Relying on Article 41 of the Convention, the applicant claimed 3,840 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage. The Government contested the claim, submitting that the finding of a violation by the Court should in itself be regarded as constituting just satisfaction for the applicant, having regard to the mitigation, the complexity of the cases and the applicant's absconding.

20. The Court is of the opinion that the grounds for the applicant's probation and light sentence cannot be established with certainty; therefore the mitigation cannot constitute just satisfaction for the protracted length of the proceedings. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and therefore rejects the claim. When assessing the non-pecuniary damage, the Court cannot overlook that some protraction was imputable to the applicant's conduct (see paragraphs 6, 10 and 18 above). However, it considers that the applicant must have sustained some non-pecuniary damage and awards him, on an equitable basis, EUR 8,000 under this head.

21. The applicant also claimed 297,000 Hungarian forints[1] for the costs and expenses incurred before the Court. The Government did not express an opinion on the matter. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the full sum claimed, that is, EUR 1,000.

22. 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 application admissible;

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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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.

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[1] Approximately EUR 1,000

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 Acting Deputy Registrar	Peer Lorenzen President