

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

SECOND SECTION

CASE OF KRISTON v. HUNGARY

(Application no. 39154/09)

JUDGMENT

STRASBOURG

24 September 2013

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



In the case of Kriston 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. 39154/09) 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 István Kriston ("the applicant"), on 16 July 2009.

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

3. On 16 November 2011 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 1953 and lives in Dunaharaszti.

5. On 20 December 1993 criminal proceedings were instituted against the applicant on charges of fraud.

6. The investigation was suspended between 14 May 1997 and 4 June 2003, because international legal assistance needed to be sought from several foreign States.

7. A bill of indictment was preferred on 27 June 2003 on charges of fraudulent bankruptcy, embezzlement and forgery of public documents.

8. After ten hearings between 20 June 2006 and 28 September 2009, on 2 November 2009 the Pest Central District Court convicted the applicant of fraudulent bankruptcy and forgery of public documents and sentenced him to a fine. The applicant waived the right to appeal; and the judgment became

final on the same day. It contained only a short reasoning which was confined to the facts of the case and the applicable law. The reasoning did not appreciate the length of the proceedings as a mitigating factor.

9. In the course of these criminal proceedings, on 27 February 1995 the applicant's passport was withdrawn under section 2(1a) of Act no. XXVIII of 1989 on Travelling Abroad and Passports, because criminal proceedings involving serious charges were pending against him.

10. From 1 September 1998 onwards, the travel ban was maintained under a new provision, namely, section 16(1a) of Act no. XII of 1998 on Travelling Abroad. As of 1 July 2003, the travel ban was annulled under this latter legislation. The Government submitted that, in principle, the applicant had therefore become able to travel with his identity card to Switzerland and Croatia and after 1 May 2004, to the Member States of the European Economic Area. The applicant submitted that, in reality, he could not do so, because the court in charge had not duly notified the passport authority of the abolition of the travel ban, which thus remained a formal legal obstacle to travelling abroad as such, in accordance with sections 146(3) and 146(5) of the Code of Criminal Procedure, as in force in the relevant period.

THE LAW

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

The Government contested that argument.

12. The period in question began on 20 December 1993 and ended on 2 November 2009. It thus lasted fifteen years and ten months before one level of jurisdiction.

In view of such lengthy proceedings, this complaint must be declared admissible.

13. 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. There has accordingly been a breach of Article 6 § 1.

14. The applicant also complained that the authorities had prevented him from travelling abroad for a disproportionately long period. He relied on Article 2 § 2 of Protocol No. 4 and Articles 13 and 17 of the Convention.

The Court considers that this complaint falls to be examined under Article 2 § 2 of Protocol No. 4 alone.

15. The Government submitted that the travel ban complained of had lasted until 1 July 2003; therefore this complaint had been introduced out of time, contrary to Article 35 § 1.

16. The applicant was of the opinion that since the competent court had not duly notified the passport authority of the abolition of the travel ban, it still constituted a legal obstacle to his leaving the country at the time of the introduction of his application and even afterwards.

17. The Court notes that the impugned travel restriction was lifted on 1 July 2003 by virtue of a change of legislation. However, it also notes the applicant's unrefuted submission that, irrespective of the passport rules, a formal travel ban was in place on account of the pending criminal proceedings, that is, at least until 2 November 2009 (see paragraph 8 above), in the context of sections 146(3) and 146(5) of the Code of Criminal Procedure, constituting an on-going situation. Since the application was lodged on 16 July 2009, this complaint has been introduced within the six-month time-limit prescribed by Article 35 § 1. Furthermore, no other grounds of inadmissibility can be established. The complaint must thus be declared admissible.

18. The applicant submitted that he was subjected to a travel ban for more than fourteen years between the revocation of his passport and the termination of the criminal proceedings, which in his view was unacceptable in the face of his rights under Article 2 § 2 of Protocol No. 4.

The Government did not address the merits of this issue.

19. The Court recalls that a very similar situation gave rise to finding a violation of that provision in *Földes and Földesné Hajlik v. Hungary* (no. 41463/02, §§ 32 to 36, ECHR 2006-XII). It finds no reason to reach a different conclusion in the present application.

It follows that there has been a violation of Article 2 § 2 of Protocol No. 4.

20. The applicant claimed altogether approximately 216,000 euros (EUR) in respect of pecuniary damage and EUR 70,500 in respect of non-pecuniary damage, plus accrued interests.

The Government contested this claim.

21. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 13,000.

22. The applicant also claimed altogether approximately EUR 2,850 in relation to various expenditures linked to the alleged violations.

The Government contested this claim as well.

23. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 for costs under all heads.

24. The Court considers it appropriate that the default interest rate 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* that there has been a violation of Article 2 § 2 of Protocol No. 4;

4. *Holds*
   (a) that the respondent State is to pay the applicant within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred 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;

5. *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