CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 22318/02
by János CSOSZÁNSZKI
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 26 October 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ,
Mr D. SPIELMANN, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 8 July 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr János Csoszánszki, is a Hungarian national currently serving a prison sentence in Hungary. He is represented before the Court by Mr N. Fady, a lawyer practising in Strasbourg.

A. The circumstances of the case

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

On 18 December 2000 the applicant was convicted of an aggravated narcotics offence and attempted aggravated narcotics smuggling by the District Court (*tingsrätten*) in Malmö and sentenced to ten years' imprisonment. The court furthermore ordered that the applicant be expelled from Sweden with a life-long ban on his return. On 6 February 2001 the Court of Appeal (*hovrätten*) of Skåne and Blekinge confirmed the judgment of the District Court.

On 28 March 2001 the Supreme Court (*Högsta domstolen*) refused the applicant leave to appeal.

On 24 April 2001, the National Prisons and Probation Authority (*Kriminalvårdsmyndigheten)* determined the period during which the applicant was to remain in prison. It recalled that he had commenced serving his sentence on 28 March 2001, and that the last day of the prison term, having regard to the total period spent in detention, would be on 22 September 2010. The Authority further determined that the applicant would be eligible for release on parole on 25 May 2007 at the earliest.

On 15 August 2002 the National Prisons and Probation Administration (*Kriminalvårdsstyrelsen*, hereinafter “the Administration”) declared its intention to make a request to the applicant's country of origin, Hungary, that he serve the remainder of his sentence there.

The applicant declared on 2 September 2002 that he did not consent to such a transfer.

On 4 November 2002 the Swedish Ministry of Justice requested the transfer of the applicant to Hungary under the Council of Europe Convention on Transfer of Sentenced Persons (hereinafter “the Transfer Convention”) and its Additional Protocol.

In an order dated 13 December 2002 the Budapest Regional Court decided that the conditions for taking over execution of the Swedish sentence were met.

On 7 and 8 January 2003 the Hungarian Ministry of Justice informed its Swedish counterpart that the Minister of Justice had approved the transfer of the applicant to Hungary and that the applicant's sentence would be transformed into ten years' imprisonment in conformity with Hungarian law and that he might be released on parole on 22 September 2008.

On 14 July 2003 the Administration consented finally to the applicant's transfer to Hungary. It stated that since the applicant's expulsion had been decided upon, and he would most probably be expelled to Hungary, there was reason under the Transfer Convention and the Additional Protocol for the applicant to serve the remainder of his sentence in Hungary.

The applicant appealed against the decision to the Government, stating *inter alia* that he would be serving a longer sentence in Hungary and that the conditions in the Hungarian prisons were much more severe than those in Swedish penitentiaries.

On 4 September 2003 the Administration confirmed its decision.

On 25 September 2003 the Swedish Government, stating that it shared the conclusion of the Administration, rejected the applicant's appeal.

The applicant was transferred to a Hungarian penitentiary on 28 October 2003.

The applicant was summoned to appear before the Budapest Regional Court, sitting as a first instance court, on 12 January 2004. On this date, a single judge decided that the applicant was to serve ten years' imprisonment in a strict-regime prison (*fegyház*) and be released on parole after having completed four-fifths of the sentence. The applicant appealed against this decision and requested that he serve his sentence in a light-regime prison (*fogház*). On 4 February 2004 the Budapest Regional Court, in a chamber of three judges sitting as a second instance, rejected the appeal.

B. Relevant domestic law and practice

1. Release on parole

Under section 20 of the Act Concerning the Calculation of Terms of Punishment (*Lag om beräkning av strafftid m m,* 1974:202) the Administration shall, as soon as possible, determine the final date of the prison term for a person having started to serve the sentence. If the sentence constitutes more than one month's imprisonment, the Administration shall also determine the earliest date of a release on parole.

Under chapter 26, section 6 of the Penal Code (*Brottsbalken,* 1962:700) a person sentenced to imprisonment shall - unless imprisonment has been decided upon in combination with probation or has been commuted from a fine - be released on parole when he or she has served two thirds of his sentence.

Under chapter 26, section 7 of the Penal Code, if the sentenced person to a high extent violates the conditions for serving the sentence, the date of the release on parole can be postponed to a later date, but not by more than 15 days on any one occasion.

The preparatory work to the instant provision (*Vissa reformer av påföljdssystemet*, proposition 1997/98:96) states that "to a high extent" means that a postponement should be employed only in the more flagrant cases and that a general assessment of whether the inmate has misbehaved will not be sufficient. Incidents such as (trying to) escape, refusal to work, contact with narcotics, drunkenness and threats or violence towards other inmates or a civil servant are examples of cases entailing a postponement of the release on parole. Postponement shall however not be decided upon if the incident leads to an indictment.

The Act on International Co-operation Regarding the Execution of Criminal Verdicts (*Lag om internationellt samarbete rörande verkställighet av brottmålsdom,* SFS 1972:260) is based on, *inter alia*, the Transfer Convention and its Additional Protocol. Under the Act, a decision made by the Administration concerning any issue other than the appointment of a public counsel, can be appealed against to the Government.

2. The Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto

The objectives of the 1983 Transfer Convention (European Treaty Series no. 112), including its Additional Protocol from 1997, are to develop international co-operation in the field of criminal law and to further the ends of justice and social rehabilitation of sentenced persons. According to the Preamble to the Transfer Convention, these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society.

Article 3 § 1 of the Transfer Convention enables the transfer of a sentenced person from "the sentencing State" to "the administering State" provided *inter alia* that the person in question is a national of the administering State; that he or she (or in some instances a legal representative) consents to the transfer; that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and provided that the sentencing and administering States both agree to the transfer.

Article 9 ("Effect of transfer for administering State") reads as follows:

> "1. The competent authorities of the administering State shall:
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> a. continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
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> b. convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.

2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.

3. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions. ...”

Article 10 (“Continued enforcement”) provides the following:

“1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.”

Article 11 (“Conversion of sentence”) reads as follows:

“1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:

a. shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;

b. may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

c. shall deduct the full period of deprivation of liberty served by the sentenced person; and

d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure. “

Article 3 § 1 of the Additional Protocol provides as follows:

“Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.”

COMPLAINTS

1. The applicant complains that the conditions in Hungarian prisons are much more severe than those in Swedish penitentiaries. In this respect the applicant has not relied on any provision of the Convention.

2. The applicant further complains that his transfer to Hungary with a view to serving the remainder of his sentence there would entail a *de facto* longer period of imprisonment of one year and four months. In this respect the applicant has not relied on any provision of the Convention.

3. The applicant also complains under Article 5 of the Convention of his pre-trial detention.

4. The applicant finally complains that he was not given a fair criminal trial in Sweden, since the courts did not take into account facts to his advantage and he was convicted in spite of meagre evidence. He relies on Articles 6 and 13 of the Convention and on Article 2 of Protocol No. 7 to the Convention.

THE LAW

1. The applicant complains that the conditions in Hungarian prisons are much more severe than those in Swedish penitentiaries.

The Court finds that the instant complaint falls to be examined under Article 3 of the Convention which reads as follows:

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

It is the Court's well-established practice that Contracting States have the right to control the entry, residence and expulsion of aliens. However, extradition by a Contracting State – or any other type of removal of a foreign national – may give rise to an issue under Article 3, and hence engage the responsibility of that State, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he is to be removed. A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 (see, for example, *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161; *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215).

The Court finds that no evidence has been submitted in order to substantiate the applicant's grievance that a transfer to a Hungarian prison would involve a real risk of treatment proscribed by Article 3. The Court would add that he would be free to file an application against Hungary

should he consider his treatment there to be in violation of that or any other provision of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

2. The applicant further complains that in Hungary he will have to serve a longer *de facto* period of imprisonment than had he served his sentence in Sweden.

The Court finds that the instant complaint falls to be examined under Article 5 of the Convention which reads in its relevant parts as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> (a) the lawful detention of a person after conviction by a competent court;..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant also complains under Article 5 of the Convention of his pre-trial detention.

The Court notes that the applicant has not substantiated this complaint. Also, an examination of the applicant's submissions does not disclose any evidence that his rights under Article 5 of the Convention were violated in respect of the pre-trial detention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

4. The applicant finally complains that he was not given a fair criminal trial.

The Court finds that the instant complaint falls to be examined under Article 6 of the Convention, which in its relevant parts reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national authority or 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 a right to a fair trial, it does not lay down rules on the admissibility or assessment of evidence, which are primarily matters for the domestic authorities and courts. Noting that the present complaint concerns the court's evaluation of facts and evidence, the Court finds that an examination of the applicant's

submissions does not disclose any appearance of a violation of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

5. The Court notes that the final decision regarding the applicant's transfer to Hungary was taken by the Government. Furthermore, the sentence which the applicant will have to serve in effect, upon his transfer to Hungary, is longer than the one provided for by Swedish law, in accordance with which he was sentenced by the Swedish courts. Without prejudice as to the question of the applicability of Article 6 of the Convention in regard to the transfer, the Court considers that the case might raise issues under Article 6 § 1. This provision reads, in relevant parts, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. The Court further notes that the crime of which the applicant was convicted was committed on 21 September 2000, at which time the Additional Protocol to the Transfer Convention had not yet been ratified by Sweden. At the time of the commission of the offence, the applicant could therefore only have served the shorter *de facto* term of imprisonment as provided for by Swedish law, unless he had agreed to the transfer. The Court considers therefore that the applicant's transfer to Hungary might also raise an issue under Article 7 of the Convention which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
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> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of whether the applicant's *de facto* longer period of imprisonment due to his transfer to Hungary amounted to a violation of Articles 5, 6 and 7 of the Convention, and the question of whether he had access to a court under Article 6 of the Convention.

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President