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

SECOND SECTION

DECISION

Application no. 24678/17
Ernő DANYI
against Hungary

The European Court of Human Rights (Second Section), sitting on 22 April 2025 as a Committee composed of:

Stéphane Pisani*, President*,
Péter Paczolay,
Juha Lavapuro*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 24678/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 March 2017 by a Hungarian national, Mr Ernő Danyi ("the applicant"), who was born in 1949, lives in Tarnalelesz and was represented by Mr I. Földes, a lawyer practising in Budapest;

the decision to give notice of the complaint concerning the fairness of the criminal proceedings to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the fairness of the applicant's trial in which judges, previously involved in the investigation phase, participated. It raises issues under Article 6 § 1 of the Convention.

2. On 28 June 2014 the applicant was placed in pre-trial detention on suspicion of extortion. His detention was prolonged on 25 July and 24 September 2014; the decisions concerned were upheld on appeal.

3. On 25 May 2016 the applicant was found guilty of extortion and sentenced to two years' imprisonment, the execution of which was suspended.

4. The applicant's appeal was heard by the Eger High Court. On 25 August 2016 the applicant requested that all judges of the High Court be excluded from the case.

5. On 30 September 2016 the High Court upheld the applicant's prison sentence, but without suspending its execution.

6. On 7 December 2016 the Debrecen Court of Appeal rejected the applicant's request to exclude all judges of the Eger High Court, finding the allegations of bias regarding the judges unfounded.

7. On 2 May 2017 the applicant requested the *Kúria* to review and quash the judgment of the Eger High Court on the basis of a violation of the rules of criminal procedure. He argued that all three members of the judicial panel that gave the final decision in his criminal case had previously decided on appeals against his pre-trial detention (see paragraph 2 above). The applicant referred to a decision delivered by the Constitutional Court on 28 November 2016 (no. 21/2016. (XI.30.). The Constitutional Court clarified in that decision that the principle of impartiality of judges required that a judge who, before the indictment, had acted in the case as an investigating judge or had reviewed an appeal against the decision of the investigating judge was to be excluded from any further proceedings in the case.

8. On 7 November 2017 the *Kúria* dismissed the petition for review and upheld the High Court's judgment. It explained that the ground for exclusion referred to by the Constitutional Court had been introduced into Act no. XIX of 1998 on the Code of Criminal Procedure with effect from 19 April 2017, but only for proceedings that had started after 30 November 2016. As the proceedings against the applicant had started before that date, the participation of the judges in question in the appellate procedure did not violate the rules of criminal procedure.

THE COURT'S ASSESSMENT

9. Relying on Article 6 § 1 of the Convention, the applicant complained about the lack of impartiality of the members of the High Court adopting the final judgment in his case on 30 September 2016.

10. The Government argued that the applicant should have submitted a constitutional complaint under section 27 of Act no. CLI of 2011 on the Constitutional Court ("the Constitutional Court Act"), asking the Constitutional Court to examine whether the exclusion requirement established by its decision no. 21/2016. (XI. 30.) had been met in his particular case, and if not, to quash the impugned court decision. They also referred to the fact that the Constitutional Court examined numerous

constitutional complaints related to the exclusion rule in question following its decision no. 21/2016. (XI. 30.).

11. The applicant disagreed. In his view, meeting the admissibility conditions of a constitutional complaint was cumbersome, and he could not be expected to submit such a complaint instead of, or in addition to, his request for review to the *Kúria*. Besides, the *Kúria* itself could also have submitted a complaint to the Constitutional Court, arguing that the temporal scope of application of the new exclusion rule enshrined in the Code of Criminal Procedure (see paragraph 8 above) was contrary to the Fundamental Law.

12. The Court refers to the general principles on the exhaustion of domestic remedies set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77 and 84, 25 March 2014). Where legal systems provide constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (ibid., § 84). Furthermore, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (ibid.).

13. The Court notes that section 27 of the Constitutional Court Act provides for a right to lodge a constitutional complaint if the grievance has occurred as a result of court rulings allegedly contrary to the Fundamental Law (see for the text of the provision *Szalontay v. Hungary* (dec.), no. 71327/13, § 22, 12 March 2019). The Court has previously found that such a constitutional complaint represents an effective remedy to be used for the purposes of Article 35 § 1 of the Convention in situations where the application concerns Convention rights that are equally protected by the Fundamental Law of Hungary (ibid., §§ 33-34).

14. The Court notes that in decision no. 21/2016. (XI.30.) the Constitutional Court found a violation of the right to a fair trial under Article XXVIII of the Fundamental Law and quashed the final court decision on the very grounds relied on by the applicant in the present case. The Court also takes note of the Government's argument that the Constitutional Court examined several complaints similar to that of the applicant following the adoption of its decision no. 21/2016. (XI.30.). In view of these elements, the Court cannot accept the applicant's argument that the Constitutional Court's threshold requirement for the admissibility of a constitutional complaint under section 29 of the Constitutional Court Act – requiring that the alleged conflict with the Fundamental Law significantly affected the judicial decision or that the case raises constitutional-law issues of fundamental importance – was cumbersome and that he would have had no chance of satisfying it.

15. Furthermore, the fact that the *Kúria* did not avail itself of the possibility of referring the matter to the Constitutional Court, should it have

considered that the temporal scope of the exclusion rule was unconstitutional, does not exempt the applicant from the obligation to afford the highest national court the possibility to examine the violations alleged in the present case.

16. The Court concludes that it does not discern any circumstances that would exempt the applicant from having to lodge a constitutional complaint in the present case (compare *Szalontay,* cited above, § 39). However, the applicant failed to do so.

17. It follows that the applicant has not exhausted domestic remedies as required by Article 35 § 1 and that the application must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 May 2025.

Dorothee von Arnim
Deputy Registrar

Stéphane Pisani
President