

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

SECOND SECTION

DECISION

Application no. 41896/07
Zoltán Gábor LUKÁCS
against Hungary

The European Court of Human Rights (Second Section), sitting on 29 January 2013 as a Chamber composed of:
Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 19 September 2007,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zoltán Gábor Lukács, is a Hungarian national, who was born in 1948 and lives in Budapest. He was represented before the Court by Mr B. Móritz, a lawyer practising in Budapest.

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

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

In the course of an investigation instituted against the applicant on charges of smuggling, on 7 March 1996 the Pásztó District Public

Prosecutor's Office ordered the impoundment of all his assets, on the basis of section 106 § 1 of the Code of Criminal Procedure, in order to secure payment to a civil party. It extended the measure to a real estate and all the movable assets within.

On 12 April 1996 a Mr A.B. requested the District Public Prosecutor's Office to hand over to him two paintings and two sculptures from the building under impoundment in order to display them at an exhibition. It appears that Mr A.B. is the artist who created the artworks in question. According to the minutes drawn up in this context, Mr A.B. had placed the artworks in the building in question, but only temporarily, since he had been maintaining friendly relations with the applicant and business relations with his company as an artist. He declared that he was the owner of the artworks.

A report was drawn up on the same day in which the Head of the Public Prosecutor's Office authorised the transfer of these objects. The report also contained a hand-written annotation which stated that the items had been indeed handed over to Mr A.B.

The bailiff of the Nógrád County Regional Court subsequently drew up a seizure report of the impounded assets, which did not include the artworks.

On 8 December 1997 the Nógrád County Regional Court lifted the impoundment of the assets listed in the seizure report, but the artworks remained impounded.

On 5 May 2001 the applicant was finally acquitted of the criminal charges by the Supreme Court.

On 16 November 2005 the applicant requested the Salgótarján District Court to lift the impoundment of the artworks and to order Mr A.B. to return them to him.

Since the applicant and Mr A.B. both claimed ownership of the assets in question, on 31 October 2006 the District Court – following two court hearings – dismissed the applicant's request to collect them, and instructed him to initiate separate civil proceedings in this respect. However, it lifted their impoundment, in compliance with section 159 § 4 (a) of the Code of Criminal Procedure.

The Nógrád County Regional Court found the District Court's decision to be in compliance with the law. Therefore it upheld the first-instance decision on 5 March 2007, drawing the applicant's attention to the possibility of pursuing a civil remedy to assert his ownership. The Regional Court's decision was served on the applicant on 19 March 2007.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention about the protracted

impoundment and the prosecuting authority's handing over of the impounded assets to a third person.

THE LAW

The applicant submitted that the artworks in question had been unduly held under impoundment and unlawfully surrendered to Mr A.B. He relied on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1.

Concerning the admissibility of the application, the Government submitted that the applicant should have filed an action for repossession under section 115(3) of the Civil Code, as instructed by the District and the Regional Courts. Moreover, had the prosecution authorities caused him damage by wrongfully surrendering the artworks to a third party he should have brought an official liability action against those authorities under section 349 of the Civil Code. However, he has not availed himself of any of those legal avenues and therefore he has not exhausted domestic remedies. Moreover, they also disputed the applicant's arguments on the merits.

The applicant contested in reply these arguments in general terms, stressing that in his view it should have been for Mr A.B., rather than him, to file a possession claim with the civil courts.

The Court observes that – quite apart from the possibility of bringing an official liability action against the prosecution authorities for their having caused damage by wrongfully surrendering the objects to a third party – the applicant has not brought a property claim before the civil courts even after the termination of the impoundment of the artworks and after having been advised to do so by the court dealing with the case. This complaint must therefore be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

To the extent that the application may be understood to concern the actual duration of the impoundment measure, allegedly in breach of Articles 6 and 13 of the Convention, the Court refers back to its finding above, that is, to the fact that the applicant has never proven, either in the domestic proceedings or before the Court, that he was the owner of the items in question. In these circumstances, the Court does not discern any appearance of a violation of his rights under Articles 6 or 13 of the Convention on account of their protracted impoundment. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a), and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President