

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

SECOND SECTION

DECISION

Application no. 16770/07
by Tibor VRANCSIK
against Hungary and Austria

The European Court of Human Rights (Second Section), sitting on 11 October 2011 as a Chamber composed of:
Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 12 April 2007,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Tibor Vrancsik, is a Hungarian national who was born in 1968. Currently, he is detained at Szeged Prison.

A. The circumstances of the case

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

On 16 September 1999 the Vienna Regional Court in Austria in a final judgment convicted the applicant of murder and other offences and sentenced him to life imprisonment with the earliest release on parole after 15 years.

On 21 April 2005 the applicant, then detained at the Stein Prison in Austria, signed a request for transfer to a Hungarian prison. He submits that he was not aware of the contents of the documents.

On 25 January 2006 the Budapest Regional Court in Hungary established that the legal conditions for the applicant's transfer to Hungary – as contained in section 46(1) of Act no. 38 of 1996 on International Assistance in Criminal Matters – were met. After his transfer, on 30 October 2006 the Budapest Regional Court converted his sentence into 20 years' imprisonment under strict regime. On the prosecution's appeal, on 29 November 2006 the Budapest Court of Appeal reversed this decision and converted the applicant's sentence into life imprisonment with the earliest release on parole after 30 years.

The Court of Appeal observed that a life sentence under Hungarian law was indeed compatible with the similar Austrian notion and could not therefore be replaced with imprisonment of a definite duration. The mere fact that the rules on parole were more severe did not mean that the applicant's penal position was aggravated within the meaning of Article 11 § 1 (d) of the 1983 Convention on the Transfer of Sentenced Persons or of Article 17 § 2 of the Vienna Treaty between Austria and Hungary on Mutual Execution of Criminal Sentences, especially in view of the fact that, in respect of those sentenced to life imprisonment, the Austrian practice, as communicated by the Austrian Federal Ministry of Justice to its Hungarian counterpart, was to apply a very strict approach in matters of release on parole.

The applicant has been detained at Szeged Prison ever since.

COMPLAINTS

Against Austria, the applicant complains under Articles 5 § 2 and 6 § 3 that he was made to sign the request of transfer without knowing its contents.

Against Hungary, he complains that the conversion of his sentence amounted to a breach of Article 6 § 3 of the Convention. Furthermore, relying on Article 7 § 1 of the Convention, he also submits that his converted sentence represents retroactive conviction as well as unjustified deprivation of liberty.

THE LAW

1. The applicant complains against Austria under Articles 5 § 2 and 6 § 3 of the Convention that he was made to sign the request of transfer without knowing its contents.

The Court observes that the procedure in Austria ended with the applicant signing, at Stein Prison, a request for transfer on 21 April 2005. However, the application was introduced only on 12 April 2007, i.e. outside the six-month time-limit laid down in Article 35 § 1 of the Convention. It follows that this part of the application must be rejected, pursuant to Article 35 §§ 1 and 4.

2. The applicant also complains against Hungary that the conversion of his sentence amounted to a breach of Article 6 § 3 of the Convention.

The Court considers that the Hungarian authorities did not determine in any way a criminal charge against the applicant when converting his Austrian prison sentence into a Hungarian one, which is clearly a matter of execution. Article 6 being inapplicable to these proceedings, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3. This part of the application must therefore be rejected, pursuant to Article 35 § 4 of the Convention.

3. The applicant further contends, relying on Article 7 § 1 of the Convention, that the life sentence into which the Hungarian authorities converted his original sentence amounts to retroactive conviction and unjustified deprivation of liberty, in view of the remoteness of his parole eligibility.

The Court considers that this complaint falls to be examined under Article 5 § 1 (a) and/or Article 7 § 1 of the Convention.

Article 5 § 1 (a) provides as follows:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ..."

Article 7 § 1 reads as follows:

> "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."

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 § 3 (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 the applicant's complaint concerning retroactive conviction and unjustified detention, administered by the Hungarian authorities;

Declares the remainder of the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President