



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

SECOND SECTION

CASE OF KÁROLY HEGEDŰS v. HUNGARY

(Application no. 11849/07)

JUDGMENT

STRASBOURG

3 November 2011

FINAL

03/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Károly Hegedűs v. Hungary,
The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 11 October 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11849/07) 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 Károly Hegedűs (“the applicant”), on 5 March 2007.

2. The applicant was represented by Mr M. Róth, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant complained, in particular, about the duration of the criminal proceedings conducted against him and about the prohibition on the alienation of his property.

4. On 5 January 2011 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Budapest.

6. On 27 May 1992 the applicant was interrogated on suspicion of fraud by the Budapest Police Department. On 30 June 1992 the Ministry of the

Interior's Passport Office withdrew his passport until the termination of the criminal proceedings, pursuant to sections 2 and 13 of Act no. XXVIII of 1989 on Travelling Abroad. On 17 December 1992 the Budapest Police Department prohibited the alienation of a car and a house, registered as property of the applicant. The aim of this measure was to secure the eventual recovery of the gain from the applicant's alleged crime.

7. The Government submitted that the applicant had not filed a complaint against the prohibition or filed a motion with the trial court to have the measure discontinued. However, it can be verified from the case file that he did so on 9 January 1993 and again on 3 March 1993.

8. On 19 July 1994 the Budapest Chief Prosecutor's Office preferred a bill of indictment against the applicant, charging him with fraud and forgery of private documents.

9. After several hearings, on 9 January 2002 the Pest Central District Court acquitted the applicant. On appeal, on 12 November 2002 the Budapest Regional Court quashed the District Court's judgment and remitted the case.

10. In the resumed proceedings, on 7 September 2005 the Pest Central District Court again acquitted the applicant. The prosecution appealed.

11. On 1 July 2006 the travel ban imposed on the applicant was lifted due to a change in the law.

12. On 29 September 2006 the Budapest Regional Court upheld the District Court's judgment acquitting the applicant, and ordered that the measure to freeze his assets be discontinued. This decision was served on the applicant on 22 November 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

13. 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 did not contest that argument.

14. The proceedings began on 27 May 1992. However, the period to be taken into consideration began only on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The Court observes that the case had already been pending on that date for over five months.

15. The proceedings ended on 22 November 2006. They thus lasted over fourteen years for two levels of jurisdiction. In view of such lengthy proceedings – and in the absence of any other reason for inadmissibility – the application must be declared admissible.

16. 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. Having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

17. The applicant also complained about the protracted prohibition on the alienation of his assets. The Court considers that this complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention, which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

18. The Government submitted that this complaint should be rejected for non-exhaustion of domestic remedies since the applicant had failed to file a complaint against it. The applicant contested this view.

19. The Court observes that the applicant formally complained about the impugned measure on two occasions, on 9 January and 3 March 1993 (see paragraph 7 above). It follows that the Government’s objection cannot be sustained. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

20. The applicant argued that the protracted attachment of his assets was an unacceptable infringement of his property rights. The Government did not submit any arguments on the merits of this complaint.

21. The Court considers that the measure undoubtedly constituted an interference with the applicant's right to the peaceful enjoyment of his possessions. It remains to be ascertained whether this interference was justified.

22. Under the Court's case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (*Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 44-46, ECHR 1999-V).

23. The Court observes that the applicant's car and house were attached for almost fourteen years. However, there was neither a *de facto* expropriation nor a transfer of property. The applicant's regained the right of disposal over these assets when he was finally acquitted (see paragraph 12 above). The measure thus amounted to control of the use of property; and accordingly, the second paragraph of Article 1 is applicable (cf. *Tendam v. Spain*, no. 25720/05, § 47, 13 July 2010).

24. The purpose of the measure was to secure the eventual recovery of the gain from the crime allegedly committed by the applicant (see paragraph 6 above). The Court is satisfied that it pursued a legitimate aim in the general interest, as required by the second paragraph of Article 1.

25. The Court reiterates that an interference, particularly one falling to be considered under the second paragraph of Article 1 of Protocol No. 1, must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], *op.cit.*, § 49).

26. In determining whether in the instant case the authorities struck a fair balance between the demands of the general interest and the protection of the applicant's fundamental rights, the Court accepts that the measure complained of falls within the State's wide margin of appreciation in securing the recovery of damages caused by crime. However, it notes that this measure was in place for some fourteen years, parallel to a trial whose length amounted to a violation of Article 6 § 1 of the Convention (see paragraph 16 above) and which resulted in the acquittal of the applicant. Moreover, there appears to be no domestic mechanism available to compensate the applicant for the protracted immobilisation of his assets and the eventual losses he may have suffered on that account. In these circumstances, the Court cannot but conclude that the prohibition at issue imposed an excessive burden on the applicant and accordingly upset the balance that must be struck between the protection of the right of property and the requirements of the general interest. Consequently, there has been a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. Lastly, the applicant complained, without relying on any particular provision of the Convention, that the protracted withdrawal of his passport had amounted to a violation of his freedom of movement.

28. The Court observes that the travel ban imposed on the applicant was terminated at the latest on 1 July 2006 with the annulment of the relevant legislative provisions (see paragraph 11 above). However, the application was introduced only on 5 March 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

30. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested this claim.

32. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on the basis of equity, EUR 19,000.

B. Costs and expenses

33. The applicant also claimed EUR 2,300 for the costs and expenses incurred before the Court. This amount should correspond to 20 hours of legal work billable by his lawyer at an hourly rate of EUR 100, as per the time-sheet submitted, as well as EUR 300 incurred in clerical costs.

34. The Government contested this claim.

35. 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 full sum claimed.

C. Default interest

36. 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 complaints concerning the length of the proceedings and the prohibition on the alienation of the applicant's assets admissible and the remainder of the application inadmissible;
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 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:
 - (i) EUR 19,000 (nineteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,300 (two thousand three 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 3 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President