

SECOND SECTION

CASE OF SZEPESI v. HUNGARY

(Application no. 7983/06)

JUDGMENT

STRASBOURG

21 December 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Szepesi v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 30 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 7983/06) 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 and German dual national, Mr Tibor Szepesi (“the applicant”), on 21 February 2006.

2. The applicant was represented by Mr U. **Sommer**, a lawyer practising in Köln. The respondent Government were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant complained about the length of his pre-trial detention. He relied on Articles 5 § 3 and 6 § 2 of the Convention.

4. On 22 October 2008 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).

5. The German Government did not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in Budapest.

7. On 31 March 2003 the applicant was arrested on charges of drug trafficking. The case involved eight further suspects including a foreigner and concerned a criminal organisation suspected of trafficking in drugs on an important scale.

8. On 3 April 2003 the Buda Central District Court ordered the applicant's pre-trial detention. Observing his dual nationality, the court held that there was a risk of absconding. This decision was reviewed and upheld on appeal by the Budapest Regional Court. On 29 April 2003 the District Court prolonged the pre-trial detention as the underlying grounds continued to exist. On 26 June 2003 the Regional Court extended the pre-trial detention of all suspects. On appeal, on 25 July 2003 the Budapest Court of Appeal upheld the suspects' pre-trial detention until 1 October 2003, holding that there was a danger of absconding, in view of the severity of the charges, and of collusion.

9. On 25 September 2003 the District Court released the applicant on bail. However, on 2 October 2003 the Regional Court reversed the decision and upheld his detention with the following reasoning:

“... Tibor Szepesi [is] prosecuted for very serious offences and the proceedings are still pending. The foreign source of drug supply and the presumed accomplices in Hungary are still to be identified; the circle of domestic buyers and the scope of drug distribution are still to be revealed. Having regard to the nature of the offence and the fact that the suspects' accomplices are still unknown, the risk that the suspects would obstruct or jeopardise the taking of evidence by influencing the witnesses or by destroying or hiding physical evidence continues to exist.”

10. On 22 December 2003 the District Court prolonged the pre-trial detention by referring to the continued existence of the underlying grounds. On 7 January 2004 the Regional Court upheld this decision with the following reasoning:

“[I]n respect of Tibor Szepesi ... a well-founded suspicion of cross border crime has arisen. The investigation authority is carrying on with procedural acts whose success would, if [Mr Szepesi is] left at liberty, be frustrated by the suspects through collusion or otherwise.”

11. On 30 March 2004 the Regional Court prolonged the applicant's pre-trial detention by referring to the continued existence of the underlying grounds.

12. On 26 May 2004 the Regional Court maintained the detention on remand on the following ground:

“[...] It can be established that the general condition for employing the strictest coercive measure is fully met and that in the present stage of the proceedings, a well-founded risk of absconding exists in respect of all suspects, in view of the extremely severe punishment imposed for the offence. This risk is especially significant in respect of [...] Mr Szepesi], who has dual nationality.”

13. On 5 July 2004 the Budapest Public Prosecutor's Office preferred a bill of indictment against the applicant and the other suspects. They were charged with aggravated drug trafficking committed in the framework of a criminal organisation.

14. On 15 July 2004 the Regional Court upheld the applicant's pre-trial detention, holding that, in view of the weight of the offences at hand, there was a risk of his absconding. On 30 July 2004 the Court of Appeal upheld this decision, endorsing its reasons.

15. On 19 January 2005 the Regional Court extended the applicant's pre-trial detention, making reference to the risk of his absconding. On 28 February 2005 it dismissed the applicant's request for release.

16. The trial began on 9 May 2005. On 2 June and 12 July 2005 the Budapest Regional Court held hearings.

On 26 July 2005 the applicant's pre-trial detention was reviewed and upheld by the Court of Appeal. It held that because he was facing a very severe sentence, had dual nationality and a domicile in Germany, there was a risk that the applicant might abscond. On 2 September 2005 the Supreme Court upheld the order of the Court of Appeal, observing that the applicant was charged with a very serious felony which was punishable with up to life imprisonment in the circumstances.

17. On 8, 10 and 15 November 2005, 10 and 12 January and 16 March 2006 further hearings took place. The applicant's pre-trial detention was meanwhile reviewed and upheld by the Court of Appeal on 28 February 2006. It observed that the suspects were prosecuted for a very serious felony to the detriment of public health, and that the severity of the sanction they were risking posed the threat of their absconding.

18. On 31 March 2006 the Budapest Regional Court terminated the applicant's pre-trial detention and ordered his house arrest, because the detention had exceeded the statutory maximum of three years. On 31 May 2006 the Court of Appeal terminated the house arrest and ordered the applicant not to leave town. This latter measure was terminated on 10 April 2008.

19. After several further hearings, on 4 September 2008 the Regional Court found the applicant guilty as charged and sentenced him to six years of strict-regime imprisonment, and banned him from participating in public affairs for seven years. In imposing the punishment, the Regional Court took into account the period spent in pre-trial detention and in house arrest. It appears that the appeal proceedings are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

20. The Court notes that the applicant complained about the duration of his detention on remand rather than his subsequent house arrest and will therefore limit its scrutiny to that period. It considers that the application falls to be examined under Article 5 § 3 alone which provides as relevant:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

21. The Government submitted that the applicant's detention had been based on the reasonable suspicion that he had committed a serious crime and justified because of the danger of his absconding or collusion. The applicant contested this view.

A. Admissibility

22. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A).

24. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention

of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

25. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Contrada v. Italy*, 24 August 1998, *Reports of Judgments and Decisions* 1998-V, § 54; *I.A. v. France*, 23 September 1998, *Reports* 1998-VII, § 102; *Toth v. Austria*, 12 December 1991, § 67, Series A no. 224; *B. v. Austria*, 28 March 1990, § 42, Series A no. 175).

26. In the present case, the Court observes that the applicant was kept in detention on remand for three years. Charged with a serious drug-related offence, he was considered by the domestic courts to pose a potential risk of absconding. This element, which was repeated by all court instances prolonging his detention, was corroborated in the eyes of the authorities by his dual nationality. Moreover, in the initial phase of the proceedings, his continued detention was also regarded as justified by the risk of collusion, given that the authorities were conducting an investigation into the activities of a gang of drug dealers operating across borders.

27. The Court considers however that it is not necessary to examine to what extent these reasons were relevant or sufficient for the applicant's prolonged detention, since the case in any event reveals an infringement of his rights under Article 5 § 3 for the following reasons.

28. The Court notes that the investigation was terminated and a bill of indictment preferred on 5 July 2004 (see paragraph 12 above). However, the applicant's trial began only on 9 May 2005 (see paragraph 15 above) while his detention continued throughout. For the Court, this ten-month period of inactivity is irreconcilable with the requisite “special diligence” in such cases (cf. *Toth v. Austria*, op.cit., §§ 74 to 78), especially in view of the fact that the applicant's detention had already exceeded one year and three months when the bill of indictment was preferred. This grievance could not be remedied by the diligence which the authorities displayed afterwards, during the trial period. It follows that the applicant's pre-trial detention exceeded a reasonable time.

There has accordingly been a violation of Article 5 § 3 of the Convention.

II. 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 10,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested this claim.

32. The Court considers that the applicant must have sustained some non-pecuniary damage and awards him EUR 4,800 under this head.

B. Costs and expenses

33. The applicant made no costs claim.

C. Default interest

34. The Court considers it appropriate that the default interest 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *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, EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Françoise Tulkens
Deputy Registrar President

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