

## SECOND SECTION

**CASE OF TURÁN v. HUNGARY***(Application no. 33068/05)*

## JUDGMENT

## STRASBOURG

6 July 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 Turán v. Hungary,**

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 15 June 2010,

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

## PROCEDURE

1. The case originated in an application (no. 33068/05) 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, Ms Tünde Turán (“the applicant”), on 8 September 2005.

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

3. The applicant alleged that the search of her law office by the police was unlawful and in breach of her right to respect for "home" within the meaning of Article 8 of the Convention.

4. On 11 March 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Budapest.

6. The applicant is a lawyer. In September 2004 the Buda Surroundings District Court ordered the search of her office, in application of section 149 subsections (4) and (5) of the Code on Criminal Procedure, and the seizure of documents concerning one of her clients, A.F., who had been suspected of having been engaged in illegal financial activities.

7. On 20 October 2004 the police searched the applicant's office. The search lasted from 9.45 a.m. until 12.55 p.m. in the presence of a public prosecutor. The applicant herself did not arrive on the premises before 10.25 a.m.

8. The Government claimed that until the applicant's arrival, another lawyer, Dr M., whose practice was in the neighbouring but entirely separate office, had been present. The applicant contended that Dr M. had not been present inside her office under search, nor had she represented her. According to the documents submitted, Dr M. was not formally appointed to defend the applicant's interests, nor did she sign the minutes of the search in such a capacity. Moreover, the parties' submissions diverged as to whether the police seized all the documents stored in the office or only those relating to A.F.

9. Subsequently, the applicant complained about the allegedly unlawful search and the indiscriminate seizure of all documents found.

10. On 5 November 2004 the Public Prosecutor's Office dismissed the applicant's complaint concerning the alleged unlawfulness of the search. The applicant appealed.

11. On 25 November 2004 the District Court ordered the restoration of part of the documents, which were unrelated to the case of the suspect.

12. On 19 May 2005 the Pest County Public Prosecutor's Office reversed the decision of 5 November 2004 and established that the search had been unlawful in that neither the applicant nor a representative had been present. It observed that Dr M. could not be considered a person appointed to represent the applicant's interests; she had not been appointed to this end by the authority in charge. The Office was however of the view that the lawfulness had been restored by virtue of the District Court's decision of 25 November 2004.

### II. RELEVANT DOMESTIC LAW

13. Under section 149 subsections (4) and (5) of the Code on Criminal Procedure, a house search (*házkutatás*) shall normally be carried out in the presence of the person concerned. In the absence of the latter or his/her representative, such a person shall be appointed to that end as can be assumed with sufficient certainty to represent appropriately the interests of the person concerned.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

14. The applicant complained that the search of her office was unlawful and unjustified, in breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his ... home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

15. The Government contested that argument.

#### A. Admissibility

16. 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

17. The Government argued that the applicant's absence during the measure complained of was limited to 40 minutes. In any event, this irregularity was imputable to the applicant who had been warned of the upcoming search and had promised that she would arrive earlier on the premises. In the Government's view, the scope of the search and confiscation of documents was determined by the need to clarify as profoundly as possible the background of the crime under investigation. The officials had confiscated only those documents which could reasonably be deemed relevant to the ongoing criminal proceedings. In all, the Government submitted that the interference with the applicant's privacy rights was not disproportionate.

18. The applicant submitted that Dr M. had not been representing her during her absence, nor had she been appointed by the police to protect her interests, therefore the measure as such had been unlawful. Moreover, the confiscation of documents had been indiscriminate and not limited to those relating to the case against A.F. In any event, on 19 May 2005 the Pest County Public Prosecutor's Office had established that the search had been conducted in a manner in breach of the law.

19. The Court observes that it has not been in dispute between the parties that the search of the applicant's law office had constituted an interference with her right to respect for her “home” for the purposes of Article 8 of the Convention. Indeed, the Court has no reason to hold otherwise (cf. *Niemietz v. Germany*, 16 December 1992, Series A no. 251-B, §§ 27 to 38; *Rotaru v. Romania* [GC], no. 28341/95, §§ 42 to 44, ECHR 2000-V).

20. The Court reiterates that an interference with the applicant's rights under Article 8 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 8. It should therefore be determined whether it was “in accordance with the law”, whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was “necessary in a democratic society” in order to achieve those aims.

21. The Court observes that under section 149 subsections (4) and (5) of the Hungarian Code on Criminal Procedure, a house search must normally be carried out in the presence of the person concerned; in the absence of the latter or a representative, such a person must be appointed to that end as can be assumed with sufficient certainty to represent appropriately the interests of the person concerned. It notes that in the particular case neither the applicant nor a person representing her interests was present during the first, crucial phase of the search. Moreover, even assuming that Dr M. was present, the Government has not submitted

any evidence that she was a person appointed to defend the applicant's interests. In these circumstances, the Court cannot but conclude that the measure was carried out in a manner at variance with Hungarian law. The same conclusion has been reached by the Pest County Public Prosecutor's Office. The Court is therefore satisfied that the measure was not in accordance with the law.

There has accordingly been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

### 22. 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

23. The applicant claimed 15 million Hungarian forints<sup>1</sup> (HUF) in respect of non-pecuniary damage.

24. The Government contested this claim.

25. The Court awards the applicant, on the basis of equity, EUR 3,000 in respect of non-pecuniary damage.

### B. Costs and expenses

26. The applicant also claimed HUF 3.6 million<sup>2</sup> for the costs and expenses incurred before the Court, the amount being billable by her lawyer as per the retainer submitted.

27. The Government contested this claim.

28. 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 were 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 sum of EUR 1,500 for the proceedings before the Court.

### C. Default interest

29. 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 8 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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five 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;

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

Done in English, and notified in writing on 6 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Françoise Tulkens

Deputy Registrar President

<sup>1</sup> 53,500 euros (EUR)

<sup>2</sup> EUR 12,800

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