CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF TÓTH, MAGYAR AND TÓTHNÉ v. HUNGARY

(Application no. 35701/04)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Tóth, Magyar and Tóthné v. Hungary,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*.

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 35701/04) 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 three Hungarian nationals, Mr László Sándor Tóth, Ms Ildikó Magyar and Mrs László Sándorné Tóth ("the applicants"), on 15 January 2004.

2. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. On 25 October 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1958, 1965 and 1958 respectively, and live in the same household in Szeged, Hungary.

A. The first proceedings

5. On account of his modest means and the financial burden of his minor daughter's upbringing, on 16 December 1996 the first applicant lodged a

request for a special family allowance (*rendszeres nevelési segély*) with the Mayor of Szeged. In February 1997 the request was refused; the applicant filed an administrative appeal. On 10 April 1997 the General Assembly of the Szeged Municipality upheld the Mayor's decision.

6. On 14 May 1997 the first applicant brought an action before the Szeged District Court for the judicial review of the General Assembly's decision. On 27 October 1997 the Supreme Court dismissed his motions for bias against the Szeged District Court and the Csongrád County Regional Court.

7. On 9 February and 29 April 1998 hearings were held. Following proceedings concerning the first applicant's renewed motions of bias, on 2 April 1999 the case was transferred to the Regional Court, because of a change in the law concerning courts' jurisdiction.

8. On 28 June 1999 the Regional Court dismissed the action. On 13 August 1999 the first applicant challenged this decision before the Supreme Court. On 13 January 2000 the Supreme Court invited him to complete his motion, which he did on 24 February 2000. On 16 February 2001 it decided to deal with the motion in appellate, rather than review proceedings.

9. On 22 February 2001 the Supreme Court quashed the decision of 28 June 1999 and remitted the case.

10. In the resumed proceedings, the judges of the Csongrád County Regional Court declared themselves biased. On 20 November 2001 the Supreme Court appointed the Bács-Kiskun County Regional Court to hear the case. That court appointed a legal-aid lawyer for the first applicant on 4 July 2002.

11. On 17 September 2002 the Bács-Kiskun County Regional Court quashed the General Assembly's decision and remitted the case to the first administrative body. The respondent authority appealed.

12. On 9 July 2003 the Budapest Court of Appeal held a hearing but the parties did not appear. On 17 September 2003 it upheld the Regional Court's decision.

13. In the resumed administrative proceedings, on 13 January 2004 the first applicant was granted the allowance sought. His quantitative appeal was dismissed by the second-instance administrative authority on 14 May 2004.

14. On 21 June 2004 the applicant sought judicial review. On 13 December 2004 the Békés County Regional Court dismissed his action.

B. The second proceedings

15. In 2001 and 2002 the applicants, acting on behalf of their minor children, lodged several requests with the Mayor of Szeged for another type of social benefit (*gyermekintézményi étkeztetési térítési díj támogatása*). On

16 July 2001 and 11 July 2002, respectively, their requests were refused. The General Assembly of the Szeged Municipality dismissed their administrative appeals on 5 October 2001 and 16 September 2002, respectively. The applicants sought judicial review before the Jász-Nagykun-Szolnok County Regional Court.

16. The Regional Court dismissed their action on 15 September 2003, holding that the administrative authorities' decisions had been in compliance with the local regulations. The latter excluded the disbursement of the allowance sought if the requesting individuals received other social benefits (*rendszeres gyermekvédelmi támogatás*) – which was the applicants' case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (FIRST PROCEEDINGS)

17. The applicants complained that the length of the first proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which insofar as relevant reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

18. The Government contested that argument.

19. The period to be taken into consideration began in February 1997 and ended on 13 December 2004. It thus lasted some seven years and ten months for two administrative instances and two court levels of jurisdiction.

A. Admissibility

20. The Court notes that the second and the third applicants were not parties to these proceedings. It follows that their complaint is incompatible *ratione personae* with provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

21. The first applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities, and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicants also complained about the outcome and unfairness of both proceedings and the protracted nature of the second case.

26. The Court will assume that domestic remedies have been exhausted and that these complaints are compatible *ratione personae* with the provisions of the Convention (cf. paragraph 20 above), because it finds that this part of the application is anyway manifestly ill-founded for the following reasons:

27. In so far as the applicants' complaints may be understood to concern the domestic courts' assessment of the evidence and the result of the proceedings, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

28. In the circumstances, there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair in either case. Moreover, as regards the length of the second proceedings,

the Court observes that they commenced in 2001 and ended on 15 September 2003 with the Regional Court's decision. Their duration – less than three years for two administrative and one court instance – did not exceed a "reasonable time".

29. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The first applicant claimed 2,000 euros in respect of non-pecuniary damage.

32. The Government deemed the claim to be reasonable.

33. The Court considers that the first applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him the full sum claimed.

B. Costs and expenses

34. The first applicant made no claim under this head.

C. Default interest

35. 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 complaint concerning the excessive length of the first proceedings admissible in respect of the first applicant, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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.

Done in English, and notified in writing on 06 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President