



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

SECOND SECTION

**CASE OF PEPSZOLG KFT. ("v.a.") v. HUNGARY**

*(Application no. 6690/02)*

JUDGMENT

STRASBOURG

27 February 2007

**FINAL**

*09/07/2007*

*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 PEPSZOLG Kft. (“v.a.”) v. Hungary,**

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*

and Mrs S. DOLLÉ, *Section Registrar*.

Having deliberated in private on 6 February 2007,

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

## PROCEDURE

1. The case originated in an application (no. 6690/02) 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 five Hungarian nationals, Mr Bálint Minda, Mr Lajos Nagy, Mr István Keller, Mr Zoltán Minda and Mr László Minda. They introduced the application in the name of the applicant company as its managers and/or shareholders, on 15 June 2001.

2. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement. The applicant company was represented by Mr G. Havas and Mr I. Barbalics, lawyers practising in Budapest and Nagyatád, respectively.

3. On 13 September 2005 the Court declared the application partly inadmissible, with the complaints of the five individual applicants being rejected. The application was retained in respect of the applicant company, whose complaint concerning the length of the proceedings was communicated to the Government. Applying Article 29 § 3 of the Convention, the Court decided to rule on the admissibility and merits of the remaining application at the same time.

4. The individual applicants have since requested the Court to accept the cession of that part of the application involving the applicant company to them personally. However, the Court rejected this demand on 6 February 2007.

## THE FACTS

5. The applicant is a limited liability company, founded in 1989, with its seat in Budapest. It is currently in the process of being wound up.

### A. Winding-up proceedings

6. In 1991 an action was brought against the applicant company by an entity called *Pesterzsébeti Papírgyár Leányvállalat* which claimed to be the successor of *PV Pesterzsébeti Papírgyár*, one of the applicant company's shareholders. The plaintiff sought *inter alia* the invalidation of the registration of the applicant company, claiming that the Articles of Association were against the law.

7. In its final decision of 28 May 1993, the Supreme Court held that the Articles of Association had been in force until the day of its decision, but were void thereafter. It ordered the winding-up of the applicant company.

8. Consequently, on 7 September 1993 the Court of Registration ordered the representative of the applicant company to submit the name, address and authorisation of a liquidation manager (*végelszámoló*). Despite the representative's failure to comply with this order, on 30 November 1993 the Court of Registration declared the applicant company's dissolution as of 28 May 1993, and registered the fact that it was in the process of winding-up.

9. On appeal, on 6 June 1995 the Supreme Court, sitting as a second-instance court, quashed this decision and remitted the case to the Court of Registration, holding that it had delivered its decision despite the representative's failure to provide the requisite information.

10. In the resumed proceedings, on 12 December 1995 the Court of Registration appointed a liquidation manager and declared the retroactive dissolution of the applicant company, as of 28 May 1993. On 6 February 1996 it ordered that corresponding entries be made in the companies register. On 29 October 1996 the Supreme Court upheld the decision of 12 December 1995. A further appeal was dismissed on 7 February 1997.

11. On 15 June 1998, 14 June 1999 and 19 December 2005, the respective liquidation managers were consecutively replaced.

12. Meanwhile, in reaction to various appeals and requests for supplementation or rectification, amendments were made to the order of 28 May 1993 on 16 July, and 1 and 17 September 1999. On 26 January 2000 the judges of the Budapest Court of Registration declared themselves biased. Subsequently, the Pest County Court of Registration was appointed to deal with the case. On 17 April and 30 May 2000 respectively, this court ordered that the decisions of 12 December 1995 and 6 February 1996 be amended. On 21 September 2001 the Supreme Court,

sitting as a second-instance court, dismissed the applicant company’s appeal filed against a procedural order of 12 July 1999.

13. On 11 May 2005 the Pest County Directorate of the Tax Authority initiated execution proceedings against the applicant company.

14. The winding-up proceedings are still pending.

## **B. Proceedings instituted in 1991, 1992 and 1995**

15. In 1991 the applicant company instituted proceedings against several defendants, claiming damages in the amount of 330,000 Hungarian forints, plus accrued interest (“the 1991 proceedings”).

16. Moreover, on 7 April 1992 the applicant company brought an action in trespass and for *restitutio in integrum* of a real property against *Pesterzsébeti Papírgyár Leányvállalat* (“the 1992 proceedings”). On 23 April 1992 the Budapest XX/XXI District Court transferred this case to the competent Budapest Regional Court. On 28 September 1992 the plaintiff completed its action.

17. On 10 March 1993 the Regional Court suspended the proceedings pending the establishment of the validity of the applicant company’s Articles of Association (see paragraphs 5 and 6 above). In April 1994 the applicant company requested the continuation of the proceedings.

18. On 17 October 1994 the Regional Court continued the proceedings and invited the applicant company to complete its action. It gave better particulars of its claims on 29 March and 25 October 1995.

19. The Regional Court held hearings on 28 November 1995, 24 January, 21 May, 16 October and 27 November 1996. On 13 October 1997 it requested a further supplementation of the applicant company’s claims. The latter complied with the order on 3 November 1997. On 25 November 1997 an expert engineer was appointed.

20. On 25 March 1998 the court, upon the parties’ request, stayed the proceedings. On 2 November 1998 the proceedings resumed. Further hearings took place on 11 December 1998, 21 April and 30 June 1999, 22 March 2000 and 17 January 2001.

21. On 15 September 2001 the applicant company submitted a motion for bias against the Regional Court. The Supreme Court rejected the motion on 11 January 2002. On 28 January 2003 the winding-up manager submitted a motion for bias against the presiding judge which was rejected on 11 February 2003.

22. On 12 February 2003 the 1991 and the 1992 proceedings were joined. On 26 June 2003 the Regional Court held a hearing and again invited the applicant company to complete its claim, which it did on 6 October 2003. On 18 November and 11 December 2003, respectively, two further motions of the applicant company for bias were rejected.

23. After a hearing on 20 November, on 26 November 2003 the Budapest Regional Court delivered a partial decision. On 16 March 2005 the Szeged Court of Appeal confirmed this decision. The applicant company lodged a petition for review with the Supreme Court. On 19 September 2005 the Supreme Court dismissed its petition.

24. Meanwhile, in February 1995 the applicant company instituted another set of proceedings against the *Pesterzsébeti Papírgyár Kft.*, the successor of the respondent in the 1992 proceedings (“the 1995 proceedings”).

On 20 March 1995 and 28 November 1995, the court held hearings. At the latter date, it invited the parties to submit preparatory documents. They complied with the order on 16 January and 23 January 1996, respectively. On 21 May 1996, and 19 June and September 1997, the court held further hearings.

25. On 25 November 1997 and 22 March 2000, the court appointed technical experts who submitted their opinions on 23 April 1998 and 8 September 2000, respectively.

26. Meanwhile, on 11 December 1998 another hearing took place and the proceedings were suspended. On 31 August 1999 the applicant company requested the court to continue the proceedings. On 17 January 2001 the court held a hearing and again suspended the proceedings.

27. On 27 August 2001 the applicant company lodged a motion for bias against the court which was dismissed by the Supreme Court on 11 January 2002. In November 2003 these proceedings were joined to the 1991 and 1992 proceedings.

28. The proceedings concerning the remainder of the joined 1991-1992-1995 cases are still pending at first instance.

### **C. The action in trespass**

29. In 1995 *Pesterzsébeti Papírgyár Kft.* filed a motion for the protection of possessions with the Pesterzsébet Municipality. On 8 November 1995 the motion was rejected. Subsequently, on 23 August 1995 the complainant brought an action in trespass against Castell Ltd., which claimed to be the successor of the applicant company, and other defendants, including the applicant company itself.

30. In its order of 26 February 1996, the Budapest XX/XXI/XXIII District Court stated that the applicant company had been dissolved and had therefore no capacity to conduct legal proceedings. It requested the plaintiff to provide the court with the name of the applicant company’s liquidation manager.

31. On 29 October 1996 the Court of Registration informed the District Court that Castell Ltd. was not a registered company.

32. The case was then transferred to the Pest Central District Court and, on 7 October 1997, to the Budapest Regional Court. On 15 October 1998 the Regional Court held that the Budapest XX/XXI/XXIII District Court was competent to hear the case.

33. On 26 November the District Court requested the plaintiff to specify its claims. On 16 December 1998 the plaintiff requested the extension of the time-limit and on 15 February 1999 it complied with the District Court’s order. On 1 April 1999 the respondents submitted their counter-claims.

34. On 1 March 1999 the District Court ordered the defendants to clarify the relation between the applicant company and Castell Ltd. In reply, the court was informed that the applicant company “had changed its name to Castell Ltd.” on 29 August 1992; however, the changes had not been registered by the Court of Registration.

35. On 25 May 1999 the District Court discontinued the proceedings against Castell Ltd., but not against the applicant company, whose winding-up was in progress. Subsequently, extensive correspondence developed between the parties and the court concerning the service of this decision and the capacity of the applicant company and Castell Ltd. to conduct legal proceedings. In the course of these events, the applicant company repeatedly submitted to the court that the two entities were one and the same, but in vain.

36. Subsequently, the District Court suspended the proceedings until the termination of the proceedings described in chapter “A” above. On 16 July 2003 the defendants complained of this decision. On 18 July 2003 the District Court dismissed their complaint. On appeal, the Budapest Regional Court, acting as a second-instance court, quashed the first-instance decision and ordered the District Court to continue the proceedings.

37. Ultimately, the decision of 25 May 1999 became final. On 3 March 2004 the District Court again suspended the proceedings until the termination of the case outlined in chapter “A” above. The defendants appealed. On 9 September 2004 the Budapest Regional Court dismissed the appeal. The proceedings have been pending ever since.

#### **D. A further action in trespass**

38. On either 21 November or 1 December 1995, *Pesterzsébeti Papírgyár Kft.* brought another action in trespass against Castell Ltd., in the context of a challenge to a decision by the Pesterzsébet Municipality given on 3 November 1995. Again, extensive correspondence developed between the court and the parties as to Castell Ltd.’s *locus standi*.

39. On 19 December 1995 the District Court invited the plaintiff to submit documents. In its submissions of 15 January 1996, the plaintiff requested the suspension of the proceedings. On 22 January 1996 the District Court refused the request.

40. On 22 February 1997 the Budapest XX/XXI/XXIII District Court transferred the case to the Pest Central District Court. On 3 December 1997 the District Court held a hearing and, at the parties' request, stayed the proceedings. On 26 May 1998 the plaintiff requested the continuation of the proceedings.

41. On 20 January 1999 the Pest Central District Court forwarded the case file to the Budapest Regional Court for appropriate delegation. On 7 December 1999 the Regional Court appointed the Budapest XX/XXI/XXIII District Court to hear the case.

42. On 2 May 2000 the District Court discontinued the proceedings, holding that Castell Ltd. was not a registered legal entity. On 23 May 2003 the court confirmed that this decision had become final on 17 June 2000.

43. On 25 September 2002 the applicant company's liquidation manager requested the continuation of the proceedings. On 23 May 2003 the District Court dismissed the request. On 28 May 2003 the applicant company complained of this decision. On 10 July 2003 the District Court dismissed the complaint. On 16 July 2003 the applicant company appealed.

44. On 10 July 2003 the court rejected Castell Ltd.'s appeal, introduced after the actual service of the first instance decision, as being inadmissible *ratione personae*.

45. On appeal, on 11 December 2003 the Budapest Regional Court ordered the resumption of the proceedings.

46. On 20 April 2004 the plaintiff eventually withdrew its action.

#### **E. Proceedings concerning the validity of the resolution of the applicant company's shareholders**

47. On 4 March 1991 *PV Pesterzsébeti Papírgyár*, a shareholder of the applicant company (see paragraph 5 above), brought an action against the latter, challenging a shareholders' resolution. Subsequently, a manager employed by the plaintiff withdrew the action, and the proceedings were discontinued on 22 May 1991. This decision was not served on the applicant company.

48. On 9 March 2004 the applicant company requested proper service of the decision. On 10 September 2004 the Szeged Court of Appeal observed that the manager in question had not been entitled to act on behalf of the plaintiff, which in any case had ceased to exist in 1997. Consequently, the proceedings had to be declared as having been interrupted (*félbeszakadt*) as of 10 December 1997.

49. On 28 September 2004 the applicant company requested the Budapest Regional Court to proceed with the case, in order to obtain a proper order to discontinue and finally terminate the interrupted proceedings. On 30 May 2005 the Regional Court dismissed the request. The applicant company's appeal was to no avail.

50. Subsequently, on 1 March 2005 the Company submitted a motion for bias against the Regional Court, which was dismissed by the Supreme Court on 24 March 2005.

51. On 20 February 2006 the Budapest Regional Court finally discontinued the proceedings.

## THE LAW

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

52. The applicant company complained that the length of each of the proceedings in the present case had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which 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...”

53. The Government contested that claim.

54. Concerning the proceedings described in chapters “A”, “B” and “E” above, the period to be taken into consideration only began on 5 November 1992, when the recognition by Hungary of the right of individual petition under the Convention took effect. However, in assessing the reasonableness of the time which elapsed after that date, account must be taken of the state of proceedings by then. It is to be noted that the proceedings had already been pending for one year and four months, approximately one year, and one year and eight months, respectively, by that date.

55. The proceedings outlined at “A” and “B” above have not yet ended. These cases have thus lasted over fourteen years and three months to date, for three and two levels of jurisdiction, respectively. The proceedings described under “E” above were terminated on 20 February 2006. They thus lasted over thirteen years and three months for one level of jurisdiction.

56. The period to be taken into consideration in the proceedings described under chapter “C” above began on 23 August 1995 and has not yet ended. The proceedings described under chapter “D” above started on 21 November 1995 and ended on 20 April 2004. These cases thus lasted over eleven years and five months, and eight years and five months, respectively, before two levels of jurisdiction.

### A. Admissibility

57. The Court notes that this complaint 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

58. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). 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). 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 case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of all five 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

59. The Court observes that the applicant company renewed its complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the fairness and outcome of the cases described in chapters “D” and “E”. However, in the partial decision of 13 September 2005, the Court had declared these complaints inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

60. As regards developments since that decision, the Court notes that the plaintiff withdrew its action in the proceedings under chapter “D” on 20 April 2004, and that the Regional Court finally discontinued the proceedings under chapter “E” on 20 February 2006. In these circumstances, the applicant company cannot claim to be a victim of a violation of the Convention in respect of either of these proceedings, regardless of the issue of exhaustion of domestic remedies.

61. It follows that this part of the application is now to be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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**

63. The applicant company claimed 400 million Hungarian forints (HUF)<sup>1</sup> in respect of pecuniary and non-pecuniary damage.

64. The Government contested the claim.

65. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, on an equitable basis, and particularly having regard to the numerous cases to which the applicant company was a party, but of which none was determined within a reasonable time, it awards the applicant company 25,000 euros (EUR) in respect of non-pecuniary damage.

#### **B. Costs and expenses**

66. The applicants’ representatives also claimed HUF 44,160,000 for the costs and expenses incurred before the domestic courts and the Court.

67. The Government did not express an opinion on the matter.

68. 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 information in its possession and the above criteria, the Court considers it reasonable to award the global sum of EUR 1,000 to cover the various costs.

#### **C. Default interest**

69. 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.

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<sup>1</sup> Approximately 1,580,000 euros (EUR)

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings 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*
  - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the national currency of the respondent State 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 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 company's claim for just satisfaction.

Done in English, and notified in writing on 27 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

F. TULKENS  
President