AS TO THE ADMISSIBILITY OF

Application No. 27131/95
by Judit ADELMANNÉ KERTÉSZ
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 April 1994 by Judit ADELMANNÉ KERTÉSZ against Hungary and registered on 26 April 1995 under file No. 27131/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 4 November 1996 and the observations in reply submitted by the applicant on 17 January 1997;

- the supplementary observations submitted by the respondent Government on 25 February 1997 and the observations in reply submitted by the applicant on 25 April 1997 and on 15 May 1997 respectively;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1945, is a Hungarian national and resident in Budapest. She edits bibliographies as a profession. Before the Commission, she is represented by Mr. E. Petruska, a lawyer practising in Budapest.

The facts of the case, as they have been submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

In June 1984 the applicant brought a trespass action before the Buda Central District Court (Budai Központi Kerületi Bíróság) against the tenant and the owner of a neighbouring restaurant. She claimed a prohibitory injunction against them to restrain the restaurant from continuing to emit strong smells and noise. In December 1985 she extended her claims to further issues of trespass.

In January 1986 the District Court, in a partial decision, applied a prohibitory injunction concerning the emission of smells. In October 1987 the Budapest Regional Court (Fovárosi Bíróság) dismissed the defendants' appeal.

Between January 1988 and September 1991 the District Court held twelve hearings concerning the remainder of the applicant's action, which was modified or extended several times. The proceedings involved an inspection of the premises and the obtaining of an expert opinion. The applicant meanwhile joined a further defendant to the proceedings and brought various administrative proceedings in the context of her principal trespass action.

Between September 1991 and May 1992 the proceedings were suspended, as requested by the parties, pending negotiations with a view to a settlement out of court. On 11 May 1992 the applicant requested the continuation of the proceedings and, subsequently, joined a further defendant to the proceedings.

In July 1992 the applicant requested from the President of the District Court that her action be given priority. In October 1992 she complained to the Minister of Justice about the length of the proceedings. The Head of Collegium of the Budapest Regional Court (Fovárosi Bíróság Kollégiumvezetoje) informed her in response that he would not take any action in the case.

On 20 January 1993 the applicant repeatedly complained to the Minister of Justice about the length of the proceedings. On 22 February 1993 she complained about the same to the President of the Supreme Court (Legfelsobb Bíróság Elnöke). On 22 March 1993 the Supreme Court informed the applicant in response that it had no competence to give her case priority.

As from 1 May 1993 the lease of the restaurant in question was regulated in a new contract. On 4 May 1993 the applicant, reacting to the contract of 1 May 1993, modified her action, apparently bringing some new claims for various injunctions. On the same date she again requested from the President of the District Court that her case be given priority. On 6 May 1993 the District Court gave priority to her action.

On 14 January 1994 the District Court held a hearing and called upon the applicant to specify her claims against each defendant. On 11 February 1994 the applicant complied with this order.

On 22 March 1994 the District Court held a further hearing.

On 30 March 1994 the District Court took a further partial decision in the case, partly admitting and partly dismissing some of the applicant's numerous claims relating to further issues of trespass, noise and the emission of strong smells. This decision concerned altogether seven defendants.

On 15 June 1995 the Regional Court, upon appeals, quashed the first instance decision of 30 March 1994 in so far as it concerned some

trespass issues.

On 14 November 1995 the Supreme Court (Legfelsobb Bíróság) rejected the applicant's petition for review, as it had been lodged out of time.

On 12 March 1996 the applicant brought a complaint against the decision of the Supreme Court before the Constitutional Court (Alkotmánybíróság). On 12 February 1997 the Constitutional Court, having regard to a recent change of the relevant legislation, discontinued its proceedings.

On 17 March 1997 the Supreme Court rejected the applicant's further complaint about the decision of 14 November 1995. Her further complaint to the Ombudsman's Office (Állampolgári Jogok Országgyulési Biztosa Általános Helyettese) was to no avail.

Meanwhile, on 19 July 1995, the District Court, in the proceedings regarding the remainder of the applicant's action, namely, inter alia, compensation matters, called upon the applicant to specify her claims against each defendant within 45 days.

On 22 November 1995 the District Court held a hearing which was adjourned so as to allow the applicant to specify her outstanding claims. Subsequently the applicant, with a view to a further modification of her claims, requested the District Court to suspend the proceedings pending the constitutional complaint proceedings.

On 5 July 1996 the District Court suspended the proceedings. Notwithstanding the Constitutional Court's decision of 12 February 1997, the proceedings have not yet been resumed.

B. Relevant domestic law

Section 3 (2) of the Code of Civil Procedure (a polgári perrendtartásról szóló 1952. évi III. törvény), as amended, provides that the court is obliged, ex officio, to arrange for actions to be dealt with thoroughly and be terminated within a reasonable time.

According to S. 146 of the Code of Civil Procedure, a plaintiff is entitled to modify his action until the first instance decision is given in the case, provided that his claim, as modified, arises from, or relates to, the legal relation underlying his original action. Until the same date the action may be extended to further defendants.

According to S. 213 of the Code of Civil Procedure, a partial decision may be taken upon such claims as are separate or can be adjudged separately, if no further hearing is necessary in respect of these claims and the adjudication of the remainder of the claims has to be postponed.

COMPLAINT

The applicant complains under Article 6 para. 1 of the Convention that the above civil court proceedings lasted unreasonably long.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 April 1994 and registered on 26 April 1995.

On 4 September 1996 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on

4 November 1996.

On 17 January 1997 the applicant submitted observations in reply to the respondent Government's observations.

On 25 February 1997 the Government submitted supplementary observations.

On 25 April and 15 May 1997 the applicant submitted supplementary observations.

THE LAW

The applicant complains, under Article 6 para. 1 (Art. 6-1) of the Convention, of the length of the proceedings concerning her trespass action.

a. The Government note that the proceedings are still pending and argue that the application, thus being premature, must be rejected for non-compliance with Article 26 (Art. 26) of the Convention. In this respect they recall that it is in fact usual practice in international and national courts that objections to admissibility should as a general rule be raised in limine litis (Eur. Court HR, De Wilde, Ooms and Versyp v. Belgium judgment of 28 May 1970, Series A no. 12, p. 30, para. 54).

The applicant recalls that, inter alia, in the Zanghì v. Italy case (Eur. Court HR, Series A no. 194-C) and in the Pierazzini v. Italy case (Eur. Court HR, Series A no. 231-C) the proceedings complained of were still pending when the Court passed its judgment. She argues that to request prior termination of the proceedings, the length of which is complained of, as a condition of admissibility would be unreasonable and contrary to the very nature of the safeguards enshrined under Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls its constant case-law according to which complaints concerning length of procedure can be brought before it, before the final termination of the proceedings in question, if at least the applicant has made use of those remedies which concerned the length of procedure (eg. No. 9816/82, Dec. 9.3.84, D.R. 36, p. 170).

The Commission notes that in July 1992 and on 4 May 1993 the applicant repeatedly requested from the President of the District Court that her action be given priority. Moreover, she unsuccessfully complained about the length of the proceedings to the Minister of Justice in October 1992 and on 20 January 1993 and to the President of the Supreme Court on 22 February 1993.

The Commission observes that the Government have not pointed to any other remedy regarding the complaint about the length of the proceedings.

In these circumstances, the Commission considers that the application cannot be rejected for the non-exhaustion of domestic remedies.

b. The Commission notes that the proceedings commenced in 1984 and are still pending. Accordingly, they have so far lasted a total of some thirteen years.

The applicant considers that the length of the proceedings exceeds the reasonable time set out in Article 6 para. 1 (Art. 6-1) of the Convention. The Government contest this.

The Commission recalls that the period to be considered begins only on 5 November 1992, when Hungary's recognition of the right of

individual petition took effect (cf. Eur. Court HR, Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, para. 53). In assessing the reasonableness of the time that elapsed after this date, account must be taken of the then state of proceedings. Accordingly, the period to be considered is four years and seven months.

The Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of "reasonable time", and having regard to all the information in its possession, that an examination of the merits of the complaint is required.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber