CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF MILITARU v. HUNGARY

(Application no. 55539/00)

JUDGMENT

STRASBOURG

12 November 2003

FINAL

12/02/2004

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 Militaru 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 GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 55539/00) 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, Mrs Illésné Militaru ("the applicant"), on 1 December 1999.

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

3. On 5 March 2002 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Nagytarcsa, Hungary.

5. On 13 October 1995 the applicant filed for divorce before the Budapest Regional Court. She also claimed custody of the couple's three children, born respectively in 1984, 1986 and 1992, and requested the payment of maintenance and the division of the matrimonial property.

6. After repeated motions for bias filed by the applicant's husband, the Buda Central District Court was first appointed to hear the case. As a

consequence of the husband's further motion for bias, the case-file was then transferred to the Zalaegerszeg District Court.

7. On 24 September 1996 the President, the Vice-President and all the judges of the Zalaegerszeg District Court declared bias.

8. On 6 February 1997 the Supreme Court appointed the Miskolc District Court and the Borsod-Abaúj-Zemplén County Regional Court to hear the case.

9. On 2 April 1997 the Miskolc District Court requested the applicant to supplement her action within 8 days. Following the grant of an extension of this time-limit, the applicant submitted additional material on 5 May 1997.

10. A hearing was held on 24 June 1997.

11. On 26 August 1997 the District Court requested the school attended by the couple's children to provide an opinion. It also appointed the Budapest Forensic Medical Expert Institute ("the Institute") to give an expert psychological opinion on the parties and their children and requested to be advised as to which parent was the more suitable to raise the children.

12. The applicant together with the three children failed to appear at the examinations scheduled for 1 October 1997 as they had not received any notification.

13. The examinations scheduled for 18 November 1997 could not be carried out as the husband and two of the children failed to appear.

14. On 9 December 1997 the Borsod-Abaúj-Zemplén County Regional Court found the husband's renewed motion for bias of 4 September 1997 unsubstantiated.

15. On 12 January 1998 the Miskolc District Court ordered the parties to provide information about the children's situation and the issue of maintenance.

16. In her letters of 15 January and 5 May 1998, the applicant requested the District Court to schedule a hearing in the case and, as an interim measure, to order her husband to pay maintenance.

17. On 25 January 1998 the husband filed a motion for bias against all of the judges of the county.

18. On 5 May 1998 the applicant requested the District Court to deal with the case urgently. On 15 July 1998 she repeatedly requested the court to pronounce the divorce, to grant her custody of the children, to oblige her husband to leave their flat and to pay maintenance.

19. On 26 October 1998 the Supreme Court dismissed the husband's renewed motion for bias and warned him that if he submitted another unsubstantiated motion, he would be fined.

20. At the court's request of 27 November 1998, the applicant provided information about the maintenance of the children.

21. On 14 December 1998 the husband again filed a motion for bias against the judges dealing with the case.

22. On 22 December 1998 the District Court suspended the proceedings pending the outcome of a parallel action to place the husband under guardianship.

23. At the applicant's request, on 6 October 1999 the District Court decided to resume the proceedings and to appoint a guardian *ad litem* to represent the husband.

24. On 9 November 1999 the applicant elaborated her action and requested the court to obtain psychological and educational opinions on the children. The latter opinion was submitted on 24 November 1999. On 7 December 1999 the Institute appointed an expert psychologist.

25. On 27 January 2000 the parties' two eldest children requested the court to place them, by way of an interim measure, with the applicant.

26. On 3 February 2000 the Institute informed the court that it struck the case out of its list as the husband and the two eldest children had repeatedly failed to appear for the examination.

27. On 8 February 2000 the District Court ordered that the two eldest children be placed with the applicant and obliged the husband to hand them over to her within three days. On 17 February 2000 the husband appealed against this decision. On 23 February 2000 the applicant informed the court that its order could not be executed as the children had in the meantime been placed in a children's home.

28. On 29 June 2000 the Supreme Court dismissed the husband's renewed motion for bias of 7 March 2000.

29. On 26 September 2000 the Borsod-Abaúj-Zemplén County Regional Court quashed the order of 8 February 2000 and remitted the issue of interim measures to the District Court.

30. At the applicant's request, on 29 September 2000 the Miskolc District Court discontinued the proceedings. In her appeal, the applicant requested that the proceedings be resumed and that the case, rather than being discontinued, should be transferred from Miskolc to a court in the town where she was domiciled. On 30 January 2001 the Borsod-Abaúj-Zemplén County Regional Court dismissed her appeal.

31. On 21 July 2001 the applicant renewed her action before the Buda Central District Court.

32. A hearing took place on 15 January 2002 and a further hearing was scheduled for 30 May 2002.

33. At present, the case is pending before the District Court.

II. RELEVANT DOMESTIC LAW

Article 19 § 2 of the Code of Civil Procedure reads as follows:

> "If a party submits a motion for bias, which is manifestly unsubstantiated, or repeatedly submits unsubstantiated motions in the same proceedings in respect of the

same judge, the court may, as a provision of the order dismissing the motion, impose a fine on him."

THE LAW

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

34. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as relevant:

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

35. The Government contested that argument.

36. The period to be taken into consideration began on 13 October 1995 and the case has not yet ended. It has thus lasted eight years so far.

A. Admissibility

37. 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

38. The Government argued that the parties themselves had contributed to the fact that the proceedings were still pending. They pointed out that the applicant's husband had repeatedly filed motions for bias, and that the applicant had only renewed her action almost six months after the dismissal of her appeal against the discontinuation order.

39. The applicant contested this view.

40. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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).

41. The Court considers that the nature of the proceedings and the issues raised cannot of themselves explain the length of time taken to reach a final

outcome in the case. A period of eight years has so far elapsed, and the proceedings are still pending.

42. As to the conduct of the applicant, the Court observes, in line with the Government's submission, that she only renewed her action six months after the dismissal of her appeal against the discontinuation order. This period of delay is to be imputed to the applicant.

43. As regards the conduct of the judicial authorities, the Court observes that there was a period of inactivity between 22 December 1998 and 6 October 1999. However, it is to be noted that during that ten-month period proceedings were being conducted with a view to placing the defendant under guardianship. The defendant had been filing time-wasting motions for bias, which had significantly hindered progress in the principal proceedings. For the Court, the determination of the guardianship issue can be considered to have been necessary for the proper administration of justice. The delay caused cannot therefore be imputed to the State.

44. The Court considers, however, that the protraction of the case, primarily caused by the domestic authorities' apparent inability to deal efficiently with the defendant's numerous motions for bias, engages the responsibility of the State. The defendant caused the proceedings to be slowed down for almost a year and a half, between 13 October 1995 and 2 April 1997, by obliging the courts to deal with his unsubstantiated motions instead of examining the merits of the case. His further motions, the last of which was dismissed on 29 June 2000, also delayed the proceedings. It is true that on 26 October 1998 the Supreme Court warned the defendant that he would be fined if he were to persist in his conduct. Despite that warning, the courts in fact continued to deal with the defendant's further abusive submissions, rather than availing themselves of the possibility offered by section 19 § 2 of the Code of Civil Procedure to impose a fine on him.

45. Having regard to the foregoing considerations and to what was at stake for the applicant, namely the custody of her children and the entitlement to occupy the flat which was jointly owned by her and the defendant, the Court concludes that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 5,000,000 Hungarian forints in respect of non-pecuniary damage.

48. The Government found the applicant's claim excessive.

49. Deciding on an equitable basis, the Court awards the applicant 7,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant made no claim under this head.

C. Default interest

51. 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 6 § 1 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 according to Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, 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 the 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 12 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President