CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60307/00
by György HORVÁTH
against Hungary

The European Court of Human Rights (Second Section), sitting on 23 March 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application lodged on 31 May 1999,

Having regard to the decision to communicate the application and to apply the procedure under Article 29 § 3 of the Convention with a view examining the admissibility and merits of the case together.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr György Horváth, was a Hungarian national born in 1946. He died on 28 March 2002. The applicant was represented before the Court by Mr I. Barbalics, a lawyer practising in Nagyatád, Hungary. On 1 July 2001, following an enquiry, the applicant's two surviving daughters, Ms M. Horváth and Ms J. Horváth, informed the Court that they wished to

continue their late father's case pending before it. They appointed Mr Barbalics as their representative.

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

A. The divorce proceedings

On 3 December 1991 the applicant filed an action for divorce with the Nagyatád District Court. In a second action, he sought the division of the matrimonial property. The two actions were later joined by the court.

On 16 April 1992 the District Court held a hearing and invited the applicant to submit a precise statement of claim. On 16 July 1992 the applicant extended the scope of his action in order to associate all the owners of the real estate with the proceedings.

On 16 November 1992 the court imposed a fine on the applicant's lawyer on the ground that it was impossible for the court to rule on the submissions which he had made. In an order of 7 December 1992 the court separated the divorce proceedings from the proceedings on the division of the matrimonial property. On 26 January 1993 the applicant informed the court that he had discontinued his legal representative's power of attorney and requested the court to assign a new legal representative to him.

On 4 February 1993 the District Court pronounced the parties' divorce.

On 11 February 1993 the District Court held a hearing in the proceedings on the division of the matrimonial property and appointed a legal counsel to represent the applicant in the case. At the applicant's request, on 2 March 1993 the court withdrew this appointment.

On 29 April 1993 the court heard the parties and requested them to submit their evidence within 15 days.

At a hearing on 22 June 1993 the court appointed an expert and instructed him to submit his opinion within 30 days. The next hearing was held on 24 June 1993.

The expert submitted his opinion on 9 August 1993.

In the meantime one of the defendants died. On 17 August 1993 the District Court suspended the proceedings pending the participation of the deceased's successors in the proceedings.

On 24 November 1993 the court held a hearing.

On 10 January 1994 the court ruled on the division of the matrimonial property.

On the applicant's appeal, on 16 June 1994 the Somogy County Regional Court quashed this judgment and remitted the case to the District Court. It held that the District Court had committed several procedural errors.

In the resumed proceedings before the Nagyatád District Court, the applicant chose to be represented by Mr S. The court held hearings on 15 September 1994 and on 8 March, 27 April, 18 May and 8 June 1995. At

the last hearing the District Court appointed an expert. He submitted his opinion on 14 July 1995.

In a judgment of 7 September 1995 the court divided the parties' matrimonial property.

On 22 February 1996 the Somogy County Regional Court confirmed the first instance judgment.

On 28 June 1996 the applicant filed with the District Court a petition for review of the judgment by the Supreme Court.

After the petition had been transferred to it by the District Court, the Supreme Court ordered on 4 March 1999 that the petition be filed by a legal representative in accordance with domestic legal requirements.

On 16 June 1999 the applicant requested legal aid. In an order of 14 October 1999 the Supreme Court dismissed the applicant's request as his financial situation did not justify the grant of legal aid. Pursuant to the relevant legislation, the Supreme Court on the same date requested the applicant to appoint, within 15 days, a lawyer to represent him in the proceedings. On 14 December 1999 the Supreme Court rejected the applicant's petition for review, observing that the applicant had failed to appoint a legal representative. The decision was served on the applicant on 17 February 2000.

B. The official liability action

In 1998 the applicant brought an official liability action before the Baranya County Regional Court. He claimed compensation from the Somogy County Regional Court, which had dealt with the divorce case. He maintained that his case had not been dealt with properly in that the court had failed to uncover that his representative, Mr S., was an impostor. After several hearings, on 8 February 2000 the Regional Court discontinued the proceedings as the applicant had withdrawn his action.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the divorce proceedings lasted an unreasonably long time and were unfair.

2. The applicant also complained about the actions of Mr S. In this connection, he invoked Articles 8, 13, 14 and 17 of the Convention.

THE LAW

A. As to the *locus standi* of Ms M. Horváth and Ms J. Horváth

The Court must first examine whether Ms M. Horváth and Ms J. Horváth's ("the applicant's daughters") are entitled to pursue the application originally introduced by the late applicant.

The applicant's daughters contend that, according to the order of the Nagyatád Public Notary, they are the only heirs of the applicant. They further claim that since the domestic proceedings concerned the division of matrimonial property, they had a material interest in the outcome of the case.

The respondent Government submit that the applicant's daughters cannot claim to be victims as they were not parties to the original proceedings. Moreover, they argue that the applicant's daughters did not show any interest in the case, which is reflected in the fact that they informed the Court of their father's death only on 1 July 2003.

The Court recalls that in various cases in which an applicant died in the course of the Convention proceedings it has taken into account the statements of the applicant's heirs or of close members of his family expressing their wish to pursue the application. The fact that, in the instant case, the heirs only informed the Court of the applicant's death following an enquiry by the Court does not have any bearing on their request.

Consequently, and in accordance with its own case-law, the Court accepts in the present case that the applicant's daughters are entitled to take the applicant's place (see, for example, the *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 29, § 2; the *X. v. France* judgment of 31 March 1992, Series A no. 234-C, p. 89, § 26; the *G. v. Italy* judgment of 27 February 1992, Series A no. 228-F, p. 65, § 2; and the *Pandolfelli and Palumbo v. Italy* judgment of 27 February 1992, Series A no. 231-B, p. 16, § 2). However, it would point out that the examination of the admissibility and merits of the case must be limited to the question whether or not the complaints as originally submitted by Mr Horváth, who remains the applicant, disclose a violation of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention concerning the length of the proceedings for divorce and the division of matrimonial property

The applicant complains that the proceedings lasted an unreasonably long time. He invokes Article 6 § 1 of the Convention which, in its relevant part, provides:

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

The Government reject the allegation. They claim that the proceedings before the Supreme Court were devoid of any prospect of success as the applicant failed to comply with the statutory formal requirements. The delay which occurred in these proceedings was therefore attributable to the applicant.

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).

The Court observes that the proceedings began on 3 December 1991 and ended on 17 February 2000 with the service of the Supreme Court's judgment. They therefore lasted seven years and three months following the Convention's entry into force with respect to Hungary on 5 November 1992. The proceedings involved three court instances.

The Court finds that the applicant contributed to the protraction of the proceedings by submitting a petition for a review by the Supreme Court in the absence of legal representation. Despite the domestic court's warning, he failed to comply with this statutory requirement. The delay occasioned by this futile procedure between 28 June 1996 and 17 February 2000 amounted to almost three years and eight months.

As to the conduct of the judicial authorities, the Court observes that the first and second instance courts held altogether ten hearings at regular intervals during the remaining period of three years and four months prior to the review proceedings. No particular periods of inactivity imputable to the authorities can be observed.

In these circumstances, the Court considers that responsibility for the protracted character of the proceedings cannot be ascribed to the Hungarian authorities. 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.

C. Alleged violation of Article 6 § 1 of the Convention in respect of the fairness of the proceedings for divorce and the division of matrimonial property

As regards the applicant's complaint concerning the fairness of the proceedings, the Court observes that the applicant failed to file a petition for review with the Supreme Court in accordance with the relevant legal requirements.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

D. Alleged violation of Articles 6, 8, 13, 14 and 17 of the Convention in respect of the official liability action

In so far as the applicant's complaints concerning Mr S. may be understood to concern the fairness and the outcome of the official liability action, the Court observes that these proceedings were discontinued at the applicant's request.

It follows that the applicant cannot claim to be a victim of the violations alleged and that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President