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. 53129/99
by Zsolt IMRE
against Hungary

The European Court of Human Rights (Second Section), sitting on 4 March 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 10 August 1999 and registered on 2 December 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Zsolt Imre, is a Hungarian national, who was born in 1968 and lives in Budapest. The respondent Government are represented by their Agent, Mr L. Höltzl.

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

1. The investigations

On 12 June 1997 the applicant, a recidivist offender, was arrested after having been caught red-handed selling amphetamine in a bar. During his interrogation on the same day the applicant refused to testify and destroyed evidence by swallowing a piece of paper found in his possession at the time of his arrest.

In the ensuing proceedings the applicant was assisted by a defence counsel of his choice.

On 14 June 1997 the Pest Central District Court ordered the applicant's detention on remand on charges of drug-trafficking. Upon the applicant's appeal, this decision was upheld by the Budapest Regional Court on 20 June 1997 on the ground of the danger of collusion.

On 30 June 1997, during his second interrogation, the applicant again refused to testify.

On 8 July 1997 the Buda Central District Court, as confirmed by the Budapest Regional Court on 14 August 1997, prolonged the applicant's detention on remand on the ground of the danger of collusion.

On 29 August 1997 the applicant made his first statement. The scope of the investigation was subsequently extended in order to uncover the chain of supply of drugs to the applicant.

On 3 September 1997 the Budapest Regional Court further prolonged the applicant's detention on remand on the grounds of the danger of collusion and the risk that the applicant would abscond. This decision was upheld on 26 September 1997 by an appeal chamber of the Regional Court.

On 26 September and 13 October 1997 two persons, also suspected of having been involved in the offence, were arrested and detained on remand.

On 13 October and 11 November 1997 the applicant was again interrogated.

On 8 January 1998 the Budapest Regional Court prolonged the applicant's detention on remand on the grounds that there was a risk of collusion and that he would abscond. This decision was upheld on 3 February 1998.

On 9 February 1998 the Attorney General's Office requested legal assistance from the Federal Ministry of Justice of Germany in order to obtain evidence from a witness who had been convicted of drugs offences in Germany and who was serving a prison sentence in Bayreuth. The information requested was made available by the German authorities in July 1998.

On 23 March 1998 the applicant was again interrogated.

On 9 June and 12 October 1998 the Supreme Court prolonged the applicant's detention on remand on the grounds of risk of collusion and the danger that he would abscond.

On 20 October 1998 the proceedings against a co-defendant were disjoined from the applicant's case since it appeared that further evidence needed to be obtained from abroad in the former's case.

On 27 October 1998 the investigations in the applicant's case were closed. The case file contained some 3,000 pages of documents.

On 23 December 1998 the applicant was heard by the public prosecutor who ordered the resumption of the investigation with a view to clarifying several matters raised by the applicant.

On 6 January 1999 the applicant was again interrogated by the police.

On 12 January 1999 the Budapest VI/VII District Public Prosecutor's Office preferred a bill of indictment against the applicant and two other defendants. The applicant was charged with the offence of abuse of narcotics.

2. The first-instance court proceedings

On 18 January 1999 the Pest Central District Court confirmed the applicant's detention on remand.

On 7 April and 13 May 1999 the District Court held hearings. On the latter date it again prolonged the applicant's detention on remand.

The next hearing was held on 23 June 1999 at which the District Court again prolonged the applicant's detention.

On 19 July 1999 the District Court confirmed, in the course of a periodic review, the applicant's detention on remand on the grounds that there was a risk that he would abscond and re-offend. The applicant's appeal was turned down by the Budapest Regional Court on 25 August 1999.

Another hearing resulting in a decision to prolong the detention took place on 16 September 1999.

A hearing scheduled for 2 December 1999 was adjourned due to the illness of one of the lay judges.

At a hearing on 13 January 2000 the applicant withdrew his defence counsel's power of attorney with the result that the hearing had to be adjourned.

On 25 January 2000 the Supreme Court confirmed, in the course of a periodic review, the applicant's detention on the grounds that there was a danger that he would abscond and re-offend.

On 3 February 2000 the applicant's new defence counsel submitted his power of attorney to the District Court.

The next hearing took place on 2 March 2000 at which the District Court, as confirmed by the Budapest Regional Court on 17 March 2000, decided to maintain the applicant's detention.

Further hearings were held on 30 March and 10 April 2000. On the latter date, the applicant was convicted of narcotics abuse and sentenced to nine years' imprisonment. The District Court relied on documentary evidence, the testimony of numerous witnesses, the opinions of medical and drugs experts and the reports and testimony of the members of a specialised anti-drug plain-clothes police squad. The District Court considered that the cumulative nature of the offence constituted an aggravating factor. The duration of the applicant's pre-trial detention was credited against his sentence.

3. The second instance proceedings before the Budapest Regional Court

On appeal, on 6 December 2000 the Budapest Regional Court held a hearing and reduced the applicant's sentence to seven years' imprisonment. The Regional Court was satisfied that the offence committed by the applicant did not qualify as a cumulative offence. By way of mitigating circumstances, the Regional Court took note of the applicant's family situation and the more favourable court practice at the time of the commission of the offence. Concerning the factors to be taken into account when sentencing the defendants, the Regional Court concluded as follows:

> "When sentencing the defendants, the court took into consideration the behaviour displayed on committing the offence, the type and quantity of the drugs involved, the defendants' *prius* as well as the long time that has elapsed since the commission of the offence."

The applicant served his prison sentence in Vác Prison. On 18 January 2003 he was conditionally released.

COMPLAINTS

1. The applicant complains under Article 5 § 3 of the Convention that his detention on remand lasted an unreasonably long time.

2. Moreover, he complains under Article 6 that he was wrongly convicted.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that the duration of his detention on remand was excessive.

Article 5 § 3, in so far as relevant, provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

a) The Government submit that the applicant can no longer claim to be a victim of a violation of his rights under the Convention within the meaning of Article 34 of the Convention, which, in its relevant part, provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

The Government maintain that the domestic authorities have afforded the applicant redress for the excessive length of his detention, given that the Regional Court took into account, as a mitigating factor, the long time that had elapsed from the commission of the crime until the applicant's conviction.

The applicant contests this view.

The Court reiterates that the word "victim", in the context of Article 34, denotes the person directly affected by the act or omission which is in issue, the existence of a violation being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, mitigation of sentence on account of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34; it is to be taken into consideration solely for the purpose of assessing the extent of the damage he has allegedly suffered. The Court does not exclude that this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for the breach of the Convention (see, *mutatis mutandis*, the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, pp. 30-31, § 66).

As the Convention forms an integral part of the law of Hungary, there was nothing to prevent the domestic courts from holding, if appropriate, that the Convention and, in particular, Article 5 had been breached. However, the Regional Court only listed, as one of several mitigating factors to be taken into account, the long time that had elapsed since the commission of the crime for which the applicant was prosecuted (cf., *mutatis mutandis*, *Beck v. Norway*, no. 26390/95, 26 June 2001, §§ 27-29, unreported). It did not make any reference to a breach of Article 5 of the Convention. In these circumstances, the Court is not convinced that there has been any acknowledgement of, let alone redress for, a breach of the applicant's rights under the Convention so as to deprive him of his status of victim within the meaning of Article 34. It follows that the Government's objection must be dismissed.

b) The Government further maintain that the applicant has not exhausted the domestic remedies available to him under Hungarian law, as required by Article 35 § 1 of the Convention, which, in its relevant part, provides:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law... ."

The Government point out that the applicant has not brought an official liability action under section 349 of the Civil Code seeking compensation for damage suffered on account of his prolonged detention on remand.

The applicant argues that the proceedings referred to by the Government were not an effective remedy for the excessive length of his detention on remand.

The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

The Court reiterates that, under the Convention organs' case-law, where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be exhausted because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights (see *Zdebski, Zdebska and Zdebska v. Poland* (dec.), no. 27748/95, 6 April 2000, unreported). In the instant case, the applicant is complaining that he was not released pending trial, not that he had no opportunity to seek compensation for his prolonged pre-trial detention.

The Court further recalls that an official liability action under section 349 of the Hungarian Civil Code cannot be considered, for want of relevant domestic case-law, an effective remedy in respect of the excessive length of either pending (see *Nyírő and Takács v. Hungary* (dec.), nos. 52724/99 and 52726/99 (joined), 17 September 2002, unreported) or terminated (see *Erdős v. Hungary* (dec.), no. 38937/97, 3 May 2001, unreported) civil proceedings. The Court sees no specific reasons to alter this conclusion in so far as a complaint of excessive prolongation of pre-trial detention is concerned.

In the light of the foregoing, the Court concludes that the complaint cannot be rejected for non-exhaustion of domestic remedies.

c) The Government maintain that the necessity of the applicant's detention on remand was frequently examined by the courts and found

justified on all occasions on the grounds of the danger of collusion during the investigations and the risk that he might abscond or re-offend. The nature of the crime which led to the applicant's arrest required complex investigations to be undertaken in order to unravel the drugs network of which the applicant was a part. Furthermore, other defendants were involved and evidence had to be obtained against one co-defendant from a foreign jurisdiction. The Government stressed that no significant delays were caused by the conduct of the authorities. In particular, the case against one of his co-defendants was disjoined from the applicant's case in order to avoid any further delay. The applicant contributed to the prolongation of the investigations and the trial by repeatedly refusing to testify, making controversial statements and withdrawing his lawyer's power of attorney. In sum, they submit that, in view of the particular circumstances of the case, the length of the applicant's detention on remand did not exceed a reasonable time.

The applicant maintains that the very fact that he was prosecuted along with co-defendants whose cases were joined to his for at least part of the procedure caused unjustified delays. As to his responsibility for delays in the proceedings, he emphasises that he was not obliged to co-operate with the police during the investigations and that he had the right freely to choose or change his defence counsel. The applicant reiterates that his detention on remand lasted two years and ten months, a duration irreconcilable with the requirements of Article 5 § 3 of the Convention.

In the light of the parties' submissions, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. Therefore, this complaint cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complains that his conviction was wrong. He invokes Article 6 § 1 of the Convention which, in its relevant part, provides:

> "In the determination of (...) any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Court reiterates that, in so far as the applicant's complaint may be understood as contesting the assessment of the evidence and the outcome of the proceedings before the domestic courts, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, according to Article 19 of 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).

In the present case, the applicant's submissions do not disclose any appearance that the applicant, assisted by a defence counsel of his choice throughout the proceedings, could not properly exercise his defence rights, that the domestic courts lacked impartiality or that the proceedings were otherwise unfair.

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

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint about the length of his pre-trial detention;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President