

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

SECOND SECTION

DECISION

Application no. 12143/09
Ferenc JAKAB
against Hungary

The European Court of Human Rights (Second Section), sitting on 10 July 2012 as a Committee composed of:
Dragoljub Popović, *President,*
András Sajó,
Paulo Pinto de Albuquerque, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*
Having regard to the above application lodged on 27 February 2009,
Having regard to the decision of 17 March 2009 to declare the case inadmissible and to that of 26 May 2009 to re-open the examination of the application,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ferenc Jakab, is a Hungarian national, who was born in 1949 and lives in Belezna. He was represented before the Court by Ms I. Zárdai, a lawyer practising in Kaposvár.

A. The circumstances of the case

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

The applicant's son died in a road accident on 17 June 1993. Having been granted only pecuniary damages by the insurance company involved,

the applicant retained a lawyer to sue the company for non-pecuniary damages. Despite his promises, the lawyer never filed that claim. Subsequently, the applicant brought an action in compensation against the lawyer. He claimed from the respondent the amount of the non-pecuniary damage which the respondent had been mandated to litigate for.

The Keszthely District Court and the Zala County Regional Court dismissed the applicant's action.

On 17 January 2008 the Supreme Court dismissed his petition for review. It found that – although the lawyer had indeed breached his mandate – the applicant could not claim from him the damage he considered to have suffered on account of his son's death, because the respondent had not caused that prejudice. On the other hand, the applicant could not prove any actual damage which he sustained directly due to the lawyer's breach of the mandate. Moreover, there was no ground to award general compensation under section 359 of the Civil Code, because the applicant had not invoked this title.

This decision was served on 23 September 2008.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that the decisions given by the domestic courts were wrong.

THE LAW

The applicant complains about the fact that the domestic courts did not compensate him for his lawyer's breach of the mandate, by awarding him the non-pecuniary damage he had intended to claim in the proceedings which had never been initiated by the lawyer in question.

The Court considers that – in so far as the case may be understood to concern the applicant's original claim relating to the dispute with the insurance company – the applicant did not exhaust domestic remedies, because no relevant action was filed in his name with the relevant courts. In this connection, the Court finds it immaterial that this was due to an omission of the of-choice lawyer who the applicant had retained.

To the extent that the application concerns the action in compensation brought against the lawyer, the Court reiterates that the actions or omissions of private individuals – in the instant case, those of the applicant's chosen lawyer – do not engage as such the Contracting States' responsibility under the Convention (see *X. v. the United Kingdom*, no. 6956/75, Commission decision of 10 December 1976, Decisions and Reports 8, p. 103; *Daud v.*

Portugal, 21 April 1998, § 38, *Reports of Judgments and Decisions*, 1998-II). Therefore, the State cannot be held liable for the actions and omissions of a lawyer whose services were retained freely by the applicant.

In application of this consideration, the Court is satisfied that the Supreme Court's ruling exculpating that lawyer cannot be regarded as infringing the applicant's right to access to a court in the context of the aborted action against the insurance company or any of his other rights guaranteed under Article 6 § 1 of the Convention – and this notwithstanding the State's positive obligations under Article 2 of the Convention. To hold the contrary would mean that the Supreme Court was under an obligation to take action to compensate the applicant for his lawyer's omission, which is a suggestion that cannot be sustained. Neither is the State's responsibility conceivable in respect of the actions or omissions of the applicant's retained lawyer representing him in the torts case against the first lawyer.

It follows that the application must be rejected pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President