CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70558/01
by Péter Zsolt KÁLLÓ
against Hungary

The European Court of Human Rights (Second Section), sitting on 14 October 2003 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 regard to the above application lodged on 20 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Péter Zsolt Kálló, is a Hungarian national, who was born in 1962 and lives in Kecskemét, Hungary. He is represented before the Court by Mr M. Róth, a lawyer practising in Budapest.

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

In 1993 the applicant and his wife separated. In 1994 the applicant's wife filed for divorce. Until September 1994 the applicant enjoyed unhindered access to the couple's three sons – born in 1986, 1987 and 1988,

respectively –, who stayed with their mother. However, access virtually ceased thereafter.

It appears that as a result of the intervention of the Buda Central District Court, the instance in charge of the divorce case, the applicant was able to meet his sons on some occasions in the home of his wife's parents during the summer of 1995. From the autumn of 1995 onwards the boys were pupils at a London boarding school.

As an interim measure in the divorce proceedings, on 10 March 1996 the District Court regulated the applicant's access in respect of the upcoming spring school holidays in Hungary. During that period, the applicant was entitled to spend one day with his sons during each of three consecutive weekends. These meetings did not take place due to the mother's reluctance to co-operate with the arrangements.

On 3 July 1996 the court took a further interim measure and granted the applicant access to his sons during their summer school holidays. He was entitled to spend two days with them on two occasions and an additional period of one week. This decision was quashed on 19 July 1996 in view of a change of holiday plans. The applicant was instead granted access for ten consecutive days in August 1996. However, the boys' envisaged stay with their father did not take place, since on 3 August 1996 they did not wish to go with him. The applicant requested assistance from the Pusztavám Municipality. By the time he returned with a municipality officer to fetch the boys, two of his sons had left and the third boy continued to refuse to go with him.

On 10 October 1996 two further days were granted to the applicant in respect of the autumn and winter holidays. The court noted that on the previous occasions the boys had been reluctant to go with their father and, for that reason, the applicant did not wish to have recourse to coercive measures.

On 26 October 1996 the applicant complained to the Municipality that his access right granted in respect of that day could not be exercised on account of the mother's reluctance to co-operate. An official apparently accompanied him back to the house where the sons were staying, but his access right could still not be enforced.

On 8 February 1999 the parties' divorce was pronounced and the mother was granted custody of the children. The applicant's access rights were regulated in detail.

On 23 November 1999 the Budapest Regional Court upheld this decision.

On 13 November 2001 the Supreme Court dismissed the applicant's petition for review.

Meanwhile, on the applicant's repeated complaint about the mother's non-compliance with the access regulations, on 16 December 1999 the Budapest V District Welfare Office warned the mother that she might be

fined for her conduct and that the applicant's access rights might be enforced with the assistance of the police.

On 2 October 2000 the Kecskemét Welfare Office imposed a fine of 50,000 Hungarian forints ("HUF") on the mother for failing to comply with the applicant's access rights as regulated in the District Court judgment. This decision became enforceable on 28 November 2000 and was enforced on 5 March 2001.

A further fine of HUF 100,000, the statutory maximum, was imposed on 18 April 2001. The Kecskemét Welfare Office noted that the mother had let her sons decide whether or not they wished to meet their father, rather than seeking actively to comply with the access regulations.

COMPLAINTS

The applicant complains that the domestic authorities have been unable to enforce his access rights. In this connection, he invokes Article 8 of the Convention and Article 5 of Protocol No. 7 to the Convention.

Moreover, he complains under Article 6 § 1 of the Convention that the divorce proceedings lasted an unreasonably long time.

THE LAW

1. The applicant complains of the non-enforcement of his access rights, in breach of Article 8 of the Convention, which reads as relevant:

> "1. Everyone has the right to respect for his ... family life ... .
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court recalls that the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. There may however be positive obligations inherent in an effective "respect" for family life. These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework and the implementation of specific steps (see, amongst other authorities, *X. and Y. v. the Netherlands,* judgment of 26 March 1985, Series A no. 91, p. 11, § 23). In both the negative and positive contexts, regard must be had to the fair balance which has to be struck between the competing interests of the

individual and the community, and the State's margin of appreciation (see, amongst other authorities, *Keegan v. Ireland,* judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

Where the measures in issue concern parental disputes over their children, however, the Court's task is to review under the Convention the decisions that the competent domestic authorities have taken in the exercise of their power of appreciation. In so doing, it must determine whether the reasons purporting to justify any measures taken with regard to an applicant's enjoyment of his right to respect for family life are relevant and sufficient (see, amongst other authorities, *Olsson v. Sweden,* judgment of 24 March 1988, Series A no. 130, p. 32, § 68).

Article 8 includes a right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation for the national authorities to take such measures. This also applies to cases where contact disputes concerning children arise between parents (*mutatis mutandis*, *Hokkanen v. Finland,* judgment of 23 September 1994, Series A no. 299, p. 20, § 55).

The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children pending or after divorce is not, however, absolute (*mutatis mutandis*, *Hokkanen* judgment cited above, p. 22, § 58). While national authorities must do their utmost to facilitate the co-operation of all concerned, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see *Hokkanen v. Finland* cited above, § 58; *Olsson v. Sweden (No. 2)*, judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90).

The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (*mutatis mutandis*, *Hokkanen v. Finland*, cited above, § 58; more recently, *Glaser v. the United Kingdom*, no. 32346/96, § 66, 19 September 2000).

As regards the background to the present case, the Court notes that the applicant was, following his separation in 1993, granted by way of interim court measures a right of regular access to his sons who stayed with their mother. The court decision on the terms of his right of access became final in 1999, when the couple's divorce was pronounced. It appears that problems concerning the implementation of these access rights arose as early as September 1994, and the applicant had to make repeated requests to the courts for their intervention and to seek the help of the competent local authority.

The Buda Central District Court took various measures to implement the applicant's right of access. In particular, during the summer of 1995 the applicant had meetings with his sons in the home of his wife's parents, apparently by virtue of the District Court's intervention. Furthermore, four decisions of the District Court granted the applicant particular entitlements to spend time with his sons in 1996. As regards efforts made by the Pusztavám Municipality, it is to be noted that in August and October 1996 officials accompanied the applicant with a view to securing his access to his sons. Nevertheless, the applicant's right of access could not be implemented.

As a next step, the Budapest V District Welfare Office warned the mother that a fine would imposed on her if she continued to evade the access regulations.

Finally, the Kecskemét Welfare Office imposed two fines of significant amounts on the mother for her failure to comply with the applicant's access rights. The amount of the second fine was the statutory maximum.

In these circumstances, the Court is satisfied that the competent authorities, bearing in mind the difficulties in reconciling the applicant's and his divorced wife's opposing positions – coupled with the children's apparent reluctance to meet the applicant – made reasonable efforts to enforce the applicant's right of access to his sons. In particular, the District Court assisted the applicant in securing his 1995 summer visits and granted his repeated requests for interim measures in 1996; the various local authorities afforded the applicant practical assistance on the occasion of visiting days, issued a warning and attempted to compel the mother by means of repeated fines to comply with her obligations. The Court also notes that, as the District Court remarked in its decision of 10 October 1996, the applicant did not wish to have recourse to coercive measures for the enforcement of his access rights and that it does not appear that he ever requested that such measures be applied.

Accordingly, the Court, having regard to the margin of appreciation enjoyed by the competent Hungarian authorities, finds no appearance of a violation of the applicant's right to respect for his family life under Article 8 of the Convention.

It would add that it finds nothing in the authorities' behaviour with respect to the applicant's access rights which discloses any appearance of a breach of his rights under Article 5 of Protocol No. 7 to the Convention.

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

2. The applicant also complains that the divorce proceedings lasted an unreasonably long time, in breach of 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 ... hearing within a reasonable time by a[n] ... tribunal ... ."

The proceedings started in 1994 and ended in November 2001 and thus lasted some seven years before three levels of court jurisdiction.

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of the above complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the divorce proceedings;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President