CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL 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 5 October 2004 as a Chamber composed of:

Mr L. LOUCAIDES, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mr K. JUNGWIERT,
Mrs W. THOMASSEN,
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 regard to the partial decision of 14 October 2003;

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the remainder of the application together;

Having regard to the parties' formal declarations accepting a friendly settlement of the case;

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 was represented before the Court by Mr Róth, a lawyer practising in Budapest.

The facts of the case, as submitted by the parties, 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. The three children stayed with their mother. However, access virtually ceased after September 1994.

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 at 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 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. However, he was unable to enforce his access right.

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 renewed complaint about the mother's non-compliance with the access arrangements, 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 have to 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 with their father, rather than seeking actively to comply with the access regulations.

COMPLAINT

The applicant complains under Article 6 § 1 about the length of the proceedings.

THE LAW

On 23 August 2004 the Court received the following declaration from the Government:

> "I declare that the Government of Hungary offer to pay EUR 6,000 (six thousand euros) to Mr Zsolt Péter Kálló, with a view to securing a resolution of the application registered under no. 70558/01. This sum shall cover any pecuniary and non-pecuniary damage as well as costs and expenses, and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 (b) of the European Convention on Human Rights.
>
> This sum shall be paid to a bank account named by the applicant, free of any taxes and charges that may be applicable.

> Simple interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement.
>
> The payment will constitute the final resolution of the case."

On 31 August 2004 the Court received the following declaration signed by the applicant:

> "I note that the Government of Hungary are prepared to pay me the sum of EUR 6,000 (six thousand euros) covering pecuniary and non-pecuniary damage as well as costs and expenses, plus interest if payment is delayed, with a view to securing a resolution of application no. 70558/01 pending before the Court.
>
> I accept the proposal and waive any further claims against Hungary in respect of the facts of this application. I declare that this payment constitutes a final resolution of the case."

The Court takes note of the agreement reached between the parties and considers that the matter has been resolved (Article 37 § 1 (b) of the Convention). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the further examination of the application. Accordingly, the application to the case of Article 29 § 3 of the Convention should be discontinued, and the remainder of the case struck out of the list.

For these reasons, the Court unanimously

Decides to strike the remainder of the case out of its list of cases.

S. DOLLÉ
Registrar

L. LOUCAIDES
President