CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 73279/01
by Edit KOLMÁN
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 30 January 2001,

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

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Edit Kolmán, is a Hungarian national who was born in 1961 and lives in Pécs.

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

On 18 December 1991 the applicant filed for divorce in the Dunakeszi District Court.

On 2 October 1993 the court, in a partial judgment, pronounced the divorce, granted custody of the couple's children to the defendant father, regulated the extent of the applicant's visiting rights and ordered her to pay maintenance. On 23 December 1993 the applicant appealed against this decision in so far as the issues of custody and maintenance were concerned. On 10 January 1994 the remainder of the decision became final.

On 10 March 1994 the Pest County Regional Court quashed, for want of thorough findings of fact, the appealed provisions of the decision and remitted this part of the case to the first-instance court. The court upheld as interim measures the orders concerning custody and visiting rights.

In the resumed first-instance proceedings, a hearing scheduled for 8 March 1995 was postponed by the court *ex officio* to 12 April and subsequently, on the defendant's request, to 17 May 1995.

On 26 May 1995 the Regional Court dismissed the applicant's motion for bias.

On 17 December 1999 the District Court dismissed the applicant's claims concerning custody and maintenance, divided the parties' marital property and ordered the applicant to pay the costs of the proceedings. In her appeal, the applicant contested the amount of the latter.

On 10 October 2000 the Regional Court reduced the amount of the costs and upheld the remainder of the first-instance judgment. It became final on the same day.

The enforcement of the decision on the division of matrimonial property is still pending, apparently due to the fact that there are third-party claims regarding the real property of the couple which was sold at a judicial auction.

On 10 January and 27 April 2001 the applicant complained to the Dunakeszi Welfare Office about her difficulties in exercising her visiting rights with regard to her 17-year old son. Meanwhile, on 23 April 2001 the Office heard the son. The latter explained to the Office that he was no longer interested in seeing his mother, who had not sought any contact with him for some four years.

On 24 May 2001 the Office refused to identify the location of the son's secondary school. It found that the practical impediments which the applicant had encountered when attempting to exercise her visiting rights were largely due to the imprecision of the court decision of 10 October 2000. The Office reminded the applicant that, according to section 92 § 5 of the Family Code, a judicial decision to fix such details could be sought by means of a new court action. On 24 July 2001 the Pest County Administrative Office upheld in essence this administrative decision.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the proceedings lasted an unreasonably long time.

She also submits that the domestic court decisions were wrong. In this respect, she invokes Articles 5, 6, 13 and 14 of the Convention, and Article 5 of Protocol No. 7 to the Convention.

Lastly, the applicant complains under Article 8 of the alleged non-enforcement of her visiting rights.

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 9,000 (nine thousand euros) to Ms Edit Kolmán, with a view to securing a resolution of the application registered under no. 73279/01. 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 3 September 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 9,000 (nine 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. 73279/01 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 case struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

S. DOLLÉ
Registrar

L. LOUCAIDES
President