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. 43352/98
by Józsefné KÓSA
against Hungary

The European Court of Human Rights, sitting on 12 March 2002 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 Ms S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 17 August 1998 and registered on 8 September 1998,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Józsefné Kósa, is a Hungarian national, who was born in 1935 and lives in Csokonyavisonta, Hungary. She is represented before the Court by Mr I. Barbalics, her son-in-law. Her previous application (no. 24143/94) was declared inadmissible by a Committee of the European Commission of Human Rights on 7 September 1995.

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

A. Particular circumstances of the case

In April 1991 the applicant requested the Barcs District Court to order a certain Mrs. M. and four other defendants to pay her compensation. At least for a part of the ensuing period, Dr P.P. was the President of the District Court. In her request the applicant claimed that she had suffered pecuniary damage on account of the defendants having arbitrarily destroyed her fungus-infected pine-tree sapling garden, cultivated next to the defendants' similar plants. In June 1991 the defendants lodged an objection and the proceedings consequently developed into civil litigation. Hearings took place on 10 October and 12 December 1991, 20 February, 16 March and 29 April 1991.

On 29 April 1992 the District Court established, in an interim judgment, that the applicant had a right to compensation. Upon the defendants' appeal, on 27 October 1992 the Somogy County Regional Court quashed the interim judgment and remitted the case to the first-instance court.

In the resumed proceedings the District Court held hearings on 23 February, 20 May, 16 September and 14 October 1993. On 29 October 1993 Dr L.B., a single judge of the District Court, dismissed the applicant's action.

Upon the applicant's appeal, on 18 January 1994 the Regional Court quashed the District Court's judgment as unfounded and remitted the case for a second time.

In the resumed proceedings Dr L.B. was again appointed to hear the case. On 27 April, 14 September and 11 October 1994 the District Court held hearings. On 24 October 1994 a forensic forestry expert was nominated, who presented his opinion on 28 March 1995. On 13 April 1995 a further hearing was held.

On 20 April 1995 the District Court dismissed the applicant's action.

After the applicant's appeal of 10 May 1995, on 23 August 1995 the Regional Court quashed the District Court's judgment, holding that there had been a breach of substantial procedural rules, and remitted the case for a third time.

In the resumed proceedings Dr L.B. was again appointed to hear the case. On 1 February 1996 the District Court appointed the Forensic Agricultural Expert Committee to give an opinion in the case, which was submitted on 5 June 1996.

On 17 October 1996 the District Court held a hearing.

On 22 October 1996 the District Court dismissed the applicant's action. Relying essentially on the expert opinions, the District Court held that – although the defendants had indeed destroyed her sapling garden unlawfully – the applicant had suffered no actual damages, since her pine-tree saplings had been, in any event, infected and thus no longer had any commercial value.

On 17 January 1997 the Regional Court dismissed the applicant's appeal. In the Regional Court's three-member panel dealing with the case, Dr A.P., the brother of Dr P.P., acted as the judge-rapporteur.

On 28 April 1998 the Supreme Court dismissed the applicant's petition for review. This decision was served in June 1998.

B. Relevant domestic law

Article 339 (1) of the Civil Code provides that any person who unlawfully causes damage to another shall be liable to pay compensation.

According to Article 349, the official liability of the State administration may be established only if the relevant ordinary remedies have been exhausted or have not been found adequate to redress the damage. Unless otherwise specified, this provision also covers the liability for damage caused by the courts or the prosecution authorities.

THE LAW

1. The applicant's first complaint relates to the length of the proceedings and Article 6 § 1 of the Convention, which provides, in its relevant parts, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by an ... impartial tribunal..."

The Government argue that the applicant has not exhausted the domestic remedies available to her under Hungarian law in that she did not bring an official liability action under Article 349 of the Civil Code in order to claim compensation for the allegedly protracted proceedings. The Government rely on the Court's Cardot v. France judgment of 19 March 1991 (Series A no. 200) in support of their submission.

The applicant contests this argument.

The Court recalls that Article 35 § 1 of the Convention provides *inter alia*:

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

In this connection, the only remedies to be exhausted are those which relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see the Vernillo v. France judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

As regards a complaint that domestic court proceedings have lasted an unreasonably long time, the Court has accepted that the availability of an action in damages may be relevant for the purposes of Article 35 § 1 of the Convention (see, among other authorities, the aforementioned Vernillo judgment, *loc. cit.*; *Kudła v. Poland* [GC], no. 30210/96, § 159; *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

The Government rely on Article 349 of the Civil Code. However, the Court is not persuaded that this remedy would be effective for a complaint about a delay in the administration of justice. The Government have not submitted any precedents illustrating the interpretation of Article 349 by the domestic courts and its practical application to length complaints (cf. *Giummarra and others v. France* (dec.), no. 61166/00, 12 June 2001). It is true that an applicant is not exonerated from the requirement to exhaust a particular domestic remedy merely because he has doubts as to its outcome. However, in the Court's opinion and in the circumstances of the instant case, to oblige the applicant to test the scope of Article 349 in the absence of any precedent would result in an excessively rigid and formalistic approach to the exhaustion requirement (see, *mutatis mutandis*, the aforementioned Cardot v. France judgment, p. 18, § 34).

As to the Government's reliance on the Cardot case, the Court would observe that Mr Cardot did have a remedy at his disposal whose effectiveness had been proven over the years, unlike the present state of domestic case-law in the instant case.

Quite apart from their failure to establish the effectiveness of the remedy provided for under Article 349, the Court further notes that the Government have not referred to the availability of any other domestic procedure which would have allowed the applicant to obtain other forms of redress such as an acceleration of the proceedings when they were still pending (cf. *Holzinger v. Austria (No. 1)* (preliminary objections), no. 23459/94, §§ 22 to 25, 30 January 2001).

In these circumstances, the Court concludes that the applicant's complaint cannot be rejected for non-exhaustion of domestic remedies.

2. The Court notes that it has not been disputed that the proceedings began in April 1991 and ended in June 1998 with the service of the Supreme Court's decision. They therefore lasted over seven years before three levels of jurisdiction.

The Court observes that, when examining the length of the proceedings, the period to be considered only begins on 5 November 1992, the date of the Convention's entry into force in respect of Hungary. However, in assessing the reasonableness of the time that elapsed after this date, account must be taken of the then state of proceedings (see the Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

3. The applicant further complains that the domestic court decisions were erroneous and that the proceedings were not fair, in particular on account of the repeated appointments of Dr L.B. to hear her case and of the fact that the President of the District Court and the judge-rapporteur at the Regional Court are brothers. She invokes Article 6 § 1 of the Convention (cited above) and Article 1 of Protocol No. 1.

Article 1 of Protocol No. 1, in its relevant parts, provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Court considers that neither the repeated appointments of Dr L.B. to hear the case nor the P. brothers' role in the proceedings could be said to disclose any appearance of a violation of the applicant's right to an impartial tribunal. It notes in particular that the District Court President, Dr P.P., never decided any of the applicant's claims in the present proceedings which his brother had to consider on appeal. Moreover, it finds nothing in the case-file, which might disclose any unfairness in the handling of this case by the domestic courts. It also finds that the judgments complained of merely constituted a decision in a civil law dispute between two private parties and thus did not imply a deprivation of property.

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.

For these reasons, the Court by a majority

Declares admissible, without prejudging the merits, the applicant's complaint relating to the excessive length of the proceedings instituted in April 1991 before the Barcs District Court;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President