AS TO THE ADMISSIBILITY OF

Application No. 26287/95
by Erzsébet KÖVENDI
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 April 1994 by Erzsébet KÖVENDI against Hungary and registered on 25 January 1995 under file No. 26287/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1953, is Hungarian national and resident in Várpalota.

The applicant's submissions, which relate to several sets of proceedings, may be summarised as follows.

In 1985 the Gödöllo District Court (Gödölloi Városi Bíróság) ordered the dissolution of the applicant's marriage. The right to custody over the spouses' child was granted to the applicant's former husband. The divorced spouses remained equally entitled to the common lease of their municipal flat.

In 1987 the applicant brought an action before the Gödöllo District Court requesting that the right to custody be transferred to her. In July 1989 the District Court transferred the custody over the child to the applicant.

Also in 1987 the applicant's former husband brought an action against the applicant regarding the right to lease the divorced spouses' flat. In November 1987 the District Court terminated the applicant's right to lease.

In January 1990, following appeals against the first instance

decisions, the Pest County Regional Court (Pest Megyei Bíróság) joined the cases in question. In April 1990 the Regional Court, upon the appeal of the applicant's former husband, dismissed the applicant's claim to take over custody. The applicant's appeal regarding the decision of November 1987 on the right to lease was to no avail.

In January 1991 the President of the Supreme Court (Legfelsobb Bíróság Elnöke) instituted review proceedings in respect of the Regional Court's decision of April 1990. In March 1991 the Supreme Court quashed this decision as well as both first instance decisions of the District Court.

In May 1991 the joined proceedings were resumed before the District Court. In July 1991 the District Court ordered a forensic psychology expert examination. Due to the parties' repeated failure to attend this examination, the Court did not pursue this matter. In September 1991 the District Court ordered the personal environment of the parties to be examined in the context of the custody issue. In January 1992 the Regional Court dismissed the applicant's motion to challenge the District Court for bias. It appears that, during the course of the proceedings before the District Court, the court hearings had to be postponed at least twice, due to the defendant's failure to appear in court.

On 4 January 1994 the District Court transferred the custody over the child to the applicant and terminated the former husband's right to lease. The former husband appealed against this decision.

Subsequently, the applicant brought a motion before the Regional Court to challenge the panel, which was to decide on the appeal. On 6 April 1994 the Regional Court admitted this claim and assigned the case to another panel.

On 14 June 1994 the Regional Court upheld the transfer of custody of the child to the applicant, but quashed the termination of the former husband's lease. It appears that this decision was served upon the parties by the end of June 1994.

On 6 October 1994, regarding a separate action brought by the local Municipality (Polgármesteri Hivatal) against the applicant in respect of outstanding rents, the applicant entered into an agreement with the plaintiff, which was confirmed and declared final by the Gödöllo District Court.

On 14 August 1995 the Budapest XI District Police Department (BRFK XI. ker. Rendorkapitányság) refused to investigate the applicant's allegations that her former husband had failed to pay child maintenance. On 20 September 1995 the Budapest XI/XXII District Public Prosecutor's Office (Budapesti XI. és XXII. kerületi Ügyészség) dismissed the applicant's complaint, as it was clear that the applicant's former husband did not have the means to pay the outstanding amounts of child maintenance.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that the court proceedings concerning the child custody and the right to lease were unfair and the courts were not impartial.

2. She further complains that the proceedings concerning the child custody and the right to lease lasted unreasonably long.

3. She also complains under Article 8 of the Convention that the Hungarian courts' failure to grant her an exclusive right to lease the flat in question amounts to a violation of her right to respect for her private life. Moreover she submits under Article 5 of Protocol No. 7 that the Hungarian authorities failed to enforce the child maintenance

to be paid by the former husband. Finally, she complains under Article 6 of the Convention about the alleged unfairness of the proceedings concerning the outstanding rents.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) that the proceedings concerning the child custody and the right to lease as well as those regarding the outstanding rents were unfair and the courts were not impartial.

Article 6 para. 1 (Art. 6-1), as far as relevant, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing."

The Commission has first examined the alleged unfairness of the Hungarian court proceedings concerning the child custody and the right to lease. In this respect the Commission observes that part of the complaints, namely those regarding the proceedings up until the Supreme Court's decision of March 1991 quashing the earlier judgments, relates to events prior to 5 November 1992, the date on which Hungary ratified the Convention and, therefore, falls outside the competence ratione temporis of the Commission.

As regards the alleged unfairness of the proceedings subsequent to the Hungarian ratification of the Convention, the Commission notes that the custody of the child was eventually granted to the applicant, whereas she was not awarded the exclusive right to lease the flat in question. The Commission, in the latter respect, recalls that, in conformity with Article 26 (Art. 26) of the Convention, it may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The Commission notes that the applicant failed to lodge a petition for review by the Supreme Court against the Pest County Regional Court's decision of 14 June 1994, as provided by Sections 270 to 275/B of Act No. III of 1952 on the Civil Procedure. Accordingly, the Commission finds that she has not exhausted the domestic remedies available to her under Hungarian law.

It follows that this part of the application is inadmissible under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains that the proceedings concerning the child custody and the right to lease lasted unreasonably long.

Article 6 para. 1 (Art. 6-1), so far as relevant, provides that "in the determination of his civil rights and obligations..., everyone is entitled to a ... hearing within a reasonable time".

The applicant complains about the length of proceedings which started in 1987, when she brought a child custody action before the Gödöllo District Court and her former husband brought before the same Court another action regarding the right to lease the flat in question.

The Commission observes that the applicant's complaint relates to proceedings, which partly took place prior to 5 November 1992, which is the date of the entry into force of the Convention and of Protocol No. 1 with respect to Hungary. However, the Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146).

The proceedings in question had lasted for about five years prior to the ratification of the Convention by Hungary on 5 November 1992. This period would, if considered alone, fall outside the scope of the Commission's considerations ratione temporis. However, in assessing the reasonableness of the time that elapsed after 5 November 1992, account must be taken of the then state of proceedings (cf., Eur. Court HR, Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, para. 53).

The Commission finds that the relevant period to be examined under Article 6 para. 1 (Art. 6-1) ended in June 1994, when the final decision of the Pest County Regional Court was served upon the applicant. Accordingly, the proceedings in question lasted for about one year and eight months subsequent to the Hungarian ratification of the Convention.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case, namely, its complexity, the conduct of the applicant and the conduct of the judicial authorities. In this instance the circumstances call for an overall assessment (cf., Eur. Court HR, Ficara v. Italy judgment of 19 February 1991, Series A, no. 196-A, p. 9, para. 17).

The Commission notes that the proceedings complained of related to the custody of the child and the right to lease the flat in question. The proceedings originated as two different sets of proceedings, which were subsequently joined. The applicant's conduct appears to have caused some delays, having regard to her repeated failure to appear before the psychology expert and to her unsuccessful motion for bias in January 1992. Moreover, any further delays in the case appear to be attributable to the defendant's repeated failure to appear before court.

Having regard to the fact that the applicant's case was dealt with by two court instances, the delay that occurred does not appear substantial enough for the total length of the proceedings to have exceeded an acceptable limit in the circumstances of the present case (cf., mutatis mutandis, Eur. Court HR, Cesarini v. Italy judgment of 12 October 1992, Series A, no. 245, p. 26, para. 20).

Consequently the applicant's complaint about the length of proceedings does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. As regards the remainder of the applicant's complaints, the Commission finds that her submissions do not disclose any appearance of a violation of any of her Convention rights.

It follows that this part of the application is likewise manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber