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. 6690/02
by Bálint MINDA and Others
against Hungary

The European Court of Human Rights (Second Section), sitting on 13 September 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 15 June 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Bálint Minda, Mr Lajos Nagy, Mr István Keller, Mr Zoltán Minda and Mr László Minda are Hungarian nationals who were born in 1933, 1947, 1946, 1965 and 1962, respectively, and live in Budapest. They introduced the application in their individual capacities and also in the name of a limited liability company they founded in 1989 (see in chapter (1) below: *PEPSZOLG Kft. "v.a."*– PEPSZOLG Ltd. "in winding-up"), whose winding-up estate manager (*végelszámoló*) is Mr Nagy, as well as in the name of the latter's successor (see in chapter (3) below:

Castell Kft. – Castell Ltd., corporate representative: Mr Keller), as the managers and/or owners of those entities. They are represented before the Court by Mr G. Havas and Mr I. Barbalics, lawyers practising in Budapest and Nagyatád, respectively.

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

(1) In 1989 the applicants founded a limited liability company, PEPSZOLG Kft ("the Company"). They agreed to include another entity, *Pesterzsébeti Papírgyár Leányvállalat* in the Company as a shareholder, whose contribution in kind was to grant the Company the use of a building. The Company was registered by the Budapest Court of Registration on 5 February 1990. Since *Pesterzsébeti Papírgyár Leányvállalat* eventually failed to secure the use of the building, the majority of the members decided to exclude it from the Company.

On 17 July 1991 *Pesterzsébeti Papírgyár Leányvállalat* brought an action against the Company before the Budapest Regional Court seeking the annulment of the shareholders' resolution. In its modified action, it also sought the invalidation of the registration of the Company, claiming that the Articles of Association were against the law.

Relying on testimonies of witnesses and the opinion of an expert, on 5 March 1993 the Regional Court accepted the plaintiff's action and held that the Articles of Association were void.

On appeal, on 28 May 1993 the Supreme Court, sitting as the second instance court, partly modified the first-instance decision and held that the Articles of Association had been in force until its decision, but were void following that day. It also ordered that action be taken either for the correction of the Articles or for the winding-up of the Company.

On 4 May 1994 the Supreme Court's review bench dismissed the Company's petition for review against the second-instance decision.

The Company's request for the re-opening of the case was finally dismissed on 30 October 2003. Moreover, in November 2004 the Supreme Court dismissed the Company's motion which had been filed with a view to having it declared that the proceedings were to be regarded as 'interrupted' (*félbeszakadt*) and thus pending, given that the plaintiff had allegedly lost its legal personality earlier during the proceedings.

(2) As a consequence of the decision of 28 May 1993, on 7 September 1993 the Court of Registration ordered the representative of the Company to submit the name, address and authorisation of a winding-up estate manager (*végelszámoló*).

Despite the representative's failure to comply with this order, on 30 November 1993 the Court of Registration declared the Company's dissolution as of 28 May 1993, and registered that it was in the process of winding-up.

On appeal, on 6 June 1995 the Supreme Court, sitting as a second-instance court, quashed this decision and remitted the case to the Court of Registration, holding that it had delivered its decision despite the representative's failure to provide the requisite information.

In the resumed proceedings, on 12 December 1995 the Court of Registration appointed a winding-up estate manager and declared the Company's dissolution retroactively, as of 28 May 1993. On 6 February 1996 it ordered that corresponding entries be made in the companies register. On 29 October 1996 the Supreme Court upheld the decision of 12 December 1995. It appears that a further appeal was dismissed on 7 February 1997.

In the meantime, the starting date of the winding-up proceedings had been published to be 22 February 1996. At the Company's complaint, on 11 June 1999 the Court of Registration corrected this date to 7 February 1997.

At the Company's shareholders' assembly on 12 February 1998, the estate manager resigned. Subsequently, Mr Nagy was appointed instead. The court made amendments to its order of 28 May 1993 on 16 July, 1 September and 17 September 1999.

On 26 January 2000 the judges of the Budapest Court of Registration declared themselves biased.

On 17 April and 30 May 2000 the Pest County Court of Registration, which had been delegated to deal with the case, ordered that the decisions of 12 December 1995 and 6 February 1996 be partly amended.

On 21 September 2001 the Supreme Court, sitting as a second-instance court, dismissed the Company's appeal filed against a procedural order of 12 July 1999.

It appears that the proceedings are still pending.

(3) In the course of the proceedings under (1) and (2) above, on 14 January 1997 the Company ceded its rights and obligations to another entity called Castell Ltd ("*Castell Kft.*"). In 1999 the latter instituted proceedings against the legal successor of *Pesterzsébeti Papírgyár Leányvállalat* and the National Privatisation Plc seeking the annulment of an agreement. On 12 January 2000 the Budapest Regional Court accepted the plaintiff's action.

On 23 January 2001 the Supreme Court, sitting as a second-instance court, quashed the first-instance judgment and dismissed Castell Ltd.'s action.

No petition for review under section 270 of the Code of Civil Procedure was submitted against the final decision.

(4) On 29 October 1991 the Company instituted proceedings against several defendants, claiming damages in the amount of 330,000 Hungarian forints plus accrued interest ("the 1991 proceedings").

Moreover, on 7 April 1992 the Company brought an action in trespass and for *restitutio in integrum* against *Pesterzsébeti Papírgyár Leányvállalat* ("the 1992 proceedings"). On 23 April 1992 the Budapest XX/XXI District Court transferred this case to the competent Budapest Regional Court.

On 28 September 1992 the plaintiff completed its action. After a stay of unknown duration in 1995, the Regional Court held hearings on 28 November 1995, 21 May 1996 and 17 September 1997. On 25 November 1997 an expert engineer was appointed. On 11 December 1998 another hearing took place. After a suspension of unknown duration in 1999, the proceedings resumed, and the Regional Court held hearings on 22 March 2000 and 17 January 2001. On that day the court again suspended the proceedings.

It appears that on 12 February 2003 the 1991 and the 1992 proceedings were joined.

After a hearing on 20 November, on 26 November 2003 the Budapest Regional Court delivered a partial decision. On 16 March 2005 the Szeged Court of Appeal confirmed this decision.

The proceedings are still pending at first instance.

(5) In 1995 *Pesterzsébeti Papírgyár Kft*., the successor of *Pesterzsébeti Papírgyár Leányvállalat*, filed a motion for protection of possessions with the Pesterzsébet Municipality. On 8 November 1995 the motion was rejected. Subsequently the complainant brought an action in trespass against Castell Ltd., the successor of the Company, and other defendants including the Company itself.

In its order of 26 February 1996 the Budapest XX/XXI/XXIII District Court stated that the Company had been dissolved and had therefore no capacity to conduct legal proceedings. It requested the plaintiff to provide the court with the name of its winding-up estate manager.

On 29 October 1996 the Budapest Court of Registration informed the District Court that Castell Ltd. was not a registered company.

The case was then transferred to the Pest Central District Court. On 7 October 1997 the District Court transferred the case to the Budapest Regional Court.

On 15 October 1998 the Budapest Regional Court held that the Budapest XX/XXI/XXIII District Court was competent to proceed in the case.

On 1 March 1999 the District Court ordered the defendants to clarify the relation between the Company and Castell Ltd. In reply, the court was informed that the Company had changed its name to Castell Ltd. on 29 August 1992; however, the changes had not been registered by the Court of Registration.

On 25 May 1999 the District Court discontinued the proceedings against Castell Ltd., but not against the Company, whose winding-up was in progress. Subsequently, extensive correspondence developed between the parties and the court concerning the service of this decision as well as the

Company's and Castell Ltd.'s respective capacities to conduct legal proceedings. In the course of these events the applicants repeatedly informed the court that the two entities were one and the same, but in vain. At last, on 18 July 2003 the decision of 25 May 1999 became final.

On 9 September 2004 these proceedings were suspended pending the termination of the case outlined under (4) above. The proceedings are pending ever since.

(6) Apparently in yet another set of proceedings, on 21 November 1995 *Pesterzsébeti Papírgyár Kft*. brought another action in trespass against Castell Ltd., in the context of challenging a decision by the Pesterzsébet Municipality given on 3 November 1995. Again, extensive correspondence developed between the court and the parties as to Castell Ltd.'s *locus standi*.

On 22 February 1997 the Budapest XX/XXI/XXIII District Court transferred the case to the Pest Central District Court.

On 20 January 1999 the Pest Central District Court forwarded the case-file to the Budapest Regional Court for appointment of the competent court. On 7 December 1999 the Regional Court appointed the Budapest XX/XXI/XXIII District Court to hear the case.

On 2 May 2000 the District Court discontinued the proceedings holding that Castell Ltd. was no registered legal entity. On 23 May 2003 the court confirmed that this decision had become final on 17 June 2000.

On 10 July 2003 the court rejected Castell Ltd.'s appeal, introduced after the actual service of the first instance decision, as inadmissible *ratione personae.*

On appeal, on 11 December 2003 the Budapest Regional Court ordered the resumption of the proceedings.

The applicants submit that on 7 May 2004 the District Court again discontinued the proceedings. Apparently in the absence of an appeal, this decision became final on 9 June 2004.

(7) On 4 March 1991 *PV Pesterzsébeti Papírgyár*, a shareholder of the Company, brought an action against the Company, challenging a shareholder's resolution. Subsequently, a manager employed with the plaintiff withdrew the action, and the proceedings were discontinued on 22 May 1991. This decision was not served on the Company, which became aware of it only in 2004.

On 9 March 2004 the Company requested that the decision be properly served on it. On 10 September 2004 the Szeged Court of Appeal observed that the manager in question had not been entitled to act on behalf of the plaintiff, which in any case had ceased to exist in 1997. Consequently, the proceedings had to be declared interrupted (*félbeszakadt*) as of 10 December 1997.

On 28 September 2004 the Company requested the Budapest Regional Court to proceed with the case, in order to obtain a proper order to discontinue and finally terminate the interrupted proceedings. On

30 May 2005 the Regional Court dismissed the request. The applicant Company's appeal was to no avail. The proceedings are consequently still pending.

COMPLAINTS

The applicants complain under Article 6 § 1 of the Convention that the above proceedings have lasted an unreasonably long time. Moreover, they submit under Articles 6 and 13 that the decisions so far adopted have been given in unfair proceedings, were wrong and amounted to interferences with their rights under Article 1 of Protocol No. 1.

THE LAW

1. The Court observes that the applicants lodged the application in their individual capacities as well as on behalf of the Company and of Castell Ltd., represented by their winding-up estate manager and corporate representative, respectively.

The Court points out that in this connection that the piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators. In the present case, this hypothesis must be discarded, since the Company and its successor, Castell Ltd., themselves applied through Mr Nagy and Mr Keller, respectively, to the Court.

It follows that the applicant individuals cannot be regarded as being entitled to apply to the Court (*Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330–A, pp. 25-26, §§ 66, 71). This part of the application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

2. The applicant companies complain about the length and the outcome of the proceedings under (1) above.

The Court observes that the proceedings ended on 4 May 1994, whereas the application was introduced only on 15 June 2001. It follows that this part of the application must be rejected as having been introduced outside the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention. The Company's unsuccessful requests for the re-opening of the case or the declaration of its being in interruption do not qualify as an

effective remedy in the case or interrupt the running of the six-month time-limit.

3. Moreover, the applicant companies complain that the proceedings under (2), (4), (5), (6) and (7) above have lasted an unreasonably long time, in breach of Article 6 § 1. Moreover, they submit under Articles 6 and 13 that the proceedings have not been fair and the decisions given amounted to infringements of their rights guaranteed by Article 1 of Protocol No. 1.

Article 6 § 1 provides as relevant:

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

The Court observes that the proceedings complained of are still pending, with the exception of the proceedings under (6) in which there appears to have been no appeal lodged against the District Court's decision of 7 May 2004. It follows that the complaints concerning their alleged unfairness and outcome must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

As regards the complaints about the length of the proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. Lastly, the applicant companies complain about the length and the outcome of the proceedings under (3) above.

The Court observes that the proceedings started in 1999 and ended in January 2001. Thus, they lasted about two years before two levels of jurisdiction, which in the Court's view does not exceed a "reasonable time" within the meaning of Article 35 § 1. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

As regards the outcome of these proceedings, no petition for review under section 270 of the Code of Civil Procedure was filed against the Supreme Court's second-instance decision of 23 January 2001. Consequently, this complaint must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant companies' complaints concerning the length of the proceedings under (2), (4), (5), (6) and (7);

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President