AS TO THE ADMISSIBILITY OF

Application No. 29752/96
by Jánosné SKOBRÁK and
Ferencné PATAKI
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 23 October 1995 by Jánosné SKOBRÁK and Ferencné PATAKI against Hungary and registered on 8 January 1996 under file No. 29752/96;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 13 December 1996 and the observations in reply submitted by the applicants on 6 February 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, born in 1954 and 1964, respectively, are Hungarian nationals. They reside in Bokod, Hungary, and are businesswomen. Before the Commission they are represented by Mr. T. Neiger M., a lawyer practising in Tatabánya, Hungary.

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

A. Particular circumstances of the case

In 1991, in the context of a trespass dispute, the Bokod Communal Clerk (Bokod Község Jegyzoje) admitted the applicants' motion to prevent Mr. M. from interfering with the electricity supply of the business premises, including a bar, rented by them. It appears,

however, that subsequently Mr. M. failed to arrange for the restoration of the electricity supply and, in December 1991, he challenged the Communal Clerk's decision before the Tatabánya District Court (Tatabányai Városi Bíróság).

In January 1992 the District Court requested the Communal Clerk to submit the relevant documents.

On 24 May 1993 the District Court called upon Mr. M. to submit information, which he did on 3 September 1993.

Due to the fact that considerable delays had occurred in numerous actions assigned to the judge in charge of the applicants' case, in early 1994 the President of the District Court carried out an examination as to the professional competence of this judge. As a consequence of this examination, subsequently the President of the Komárom-Esztergom County Regional Court (Komárom-Esztergom Megyei Bíróság Elnöke) requested this judge to resign.

On 31 March 1994 the applicants' lease of the business premises at issue expired.

On 8 September 1994 the applicants' representative complained to the Ministry of Justice (Igazságügyi Minisztérium) about the length of the proceedings. He also brought compensation claims in this respect and proposed that an out-of-court agreement be made between the applicants and the Ministry of Justice acting on behalf of the competent Regional Court.

On 28 September 1994 the Ministry of Justice informed the applicants' representative that it was within the competence of the President of the Regional Court to take action in respect of any delays in the proceedings before the District Court and to consider any compensation claims.

Meanwhile, the judge in charge complied with the request of the President of the Regional Court and resigned. On 7 October 1994 the applicants' case was assigned to another judge and was given priority treatment by the President of the District Court.

On 12 October 1994 the applicants' representative complained to the President of the Regional Court about the length of the proceedings, maintaining his compensation claims and his proposal that an out-of-court agreement be reached.

On 11 November 1994 the President of the Regional Court informed the applicants' representative that he had examined his complaint and that he could not consider the compensation claims, unless the applicants' representative submitted a power of attorney, which he did on 16 November 1994.

On 28 November 1994 the District Court held a hearing, which was adjourned with a view to obtaining witness evidence and information from the Electricity Company.

On 19 December 1994 the President of the Regional Court confirmed that he had taken administrative measures upon the applicants' complaint. Moreover, he pointed out that the compensation claims were premature and could be considered on the merits only subsequent to the final decision in the principal case.

On 25 May 1995 the case was assigned to yet another judge.

On 3 November 1995 the District Court held a hearing, to which the applicants' representative was not summoned. The District Court nevertheless heard the witnesses present and fixed a hearing for

24 January 1996, which eventually had to be adjourned, as the applicants' representative again had not been duly summoned.

On 28 February 1996 the District Court held a hearing and dismissed the plaintiff's action.

On 18 April 1996 the plaintiff lodged an appeal against the first instance decision.

On 15 October 1996 the Regional Court upheld the first instance decision.

On 19 November 1996 the Regional Court corrected its judgment as to the settlement of procedural expenses.

On the same day the President of the Regional Court refused to accept an out-of-court agreement settling the applicants' claims for compensation for the length of the proceedings and pointed out that the applicants could bring an action to this end.

B. Relevant domestic law

Section 3 (2) of the Code of Civil Procedure (a polgári perrendtartásról szóló 1952. évi III. törvény), as amended, provides that the court is obliged, ex officio, to arrange for actions to be dealt with thoroughly and be terminated within a reasonable time. Section 5 (1) provides that the parties shall exercise their procedural rights in bona fide.

Section 3 (2), which entered into force on 1 January 1993, can be referred to, if a person, claiming non-respect of these duties of the court, brings an official liability action in pursuance of S. 349 of the Civil Code (a Polgári Törvénykönyvrol szóló 1959. évi IV. törvény).

Section 97 of the Code of Civil Procedure provides that, if a party has appointed a representative to proceed in his case, the court documents shall be served upon the representative. According to S. 128, an action has legal effect (perindítás hatályai) only once it is notified to the defendant. Section 135 (1) requires the court to adjourn a hearing, if a party is not present and has not been duly summoned.

Section 339 (1) of the Civil Code provides that anybody who unlawfully causes damage to another person shall compensate for it. According to S. 349, official liability [of the state administration] may be established only if the relevant ordinary remedies have been exhausted or have not been fit to prevent damages. Unless otherwise regulated, this applies accordingly to the liability for damages caused by the courts or the prosecution authorities.

According to S. 26 (2) of Law-Decree No. 11 of 1960, the Communal Clerk's decision as to the question of possession shall be executed within a delay of three days, even if the party concerned has brought a court action.

COMPLAINT

The applicants complain under Article 6 para. 1 of the Convention that the above civil court proceedings lasted unreasonably long.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 October 1995 and registered on 8 January 1996.

On 16 October 1996 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 13 December 1996.

On 6 February 1997 the applicants' representative submitted observations in reply to the respondent Government's observations.

THE LAW

The applicants complain about the length of the proceedings.

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".

a. The Government argue that the applicants have not exhausted the domestic remedies available to them under Hungarian law in that they did not bring an official liability action under S. 349 of the Civil Code, referring to S. 3 (2) of the Code of Civil Procedure, claiming compensation for the protracted proceedings. In the light of recent domestic jurisprudence, the Government consider such an action an effective remedy. The Government emphasize that the statement of the President of the Regional Court, dated 19 November 1996, did not prevent the applicants from bringing an official liability action.

The applicants argue that the Hungarian law does not provide any effective and available remedy to redress the prejudice caused by protracted civil proceedings. Given the lack of an established domestic jurisprudence, the official liability action, as suggested by the Government, cannot be regarded as an effective remedy. Moreover, in such proceedings only partial satisfaction, in the form of compensation for pecuniary loss, could be awarded, as opposed to full-scale just satisfaction including the publication of a violation of the Convention and compensation for moral damages. In any event, they brought their compensation claims before the President of the Regional Court in October 1994, who eventually refused those claims only on 19 November 1996.

The Commission recalls that in respect of the length of civil proceedings still pending, a remedy can only be considered effective if it can be brought rapidly, while these proceedings are pending (No. 8990/80, Dec. 6.7.82, D.R. 29, p. 129; No. 9816/82, Dec. 9.3.84, D.R. 36, p. 170; No. 10103/82, Dec. 6.7.84, D.R. 39, p. 186) and if it provides direct and speedy protection of the rights guaranteed by Article 6 para. 1 (Art. 6-1) (No. 10092/82, Dec. 5.10.84, D.R. 40, p. 118; No. 10673/83, Dec. 7.5.85, D.R. 42, p. 237).

The Commission notes that on 19 December 1994 the President of the Regional Court pointed out that the applicants' compensation claims were premature and could be considered on the merits only subsequent to the final decision in the principal case.

The Commission finds that, subsequent to protracted civil court proceedings, a further civil action does not provide direct and speedy redress. Accordingly, in the present case an official liability action cannot be regarded as an effective remedy, which the applicants are required to exhaust (cf. No. 26209/95, T.K. and T.K. v. Hungary, Dec. 21.5.97, unpublished). The complaint cannot, therefore, be rejected for non-exhaustion of domestic remedies.

b. The Government admit that the subject matter of the case was not complicated. As to the conduct of the parties, the Government recall

that the right of every person to have his case heard within a reasonable time depends, particularly in civil cases, on the conduct of the person concerned, who must act with the required diligence; the exercise of this right implies not only that the person concerned should refrain from lodging applications or appeals to delay the proceedings, but that he should do everything possible to speed up the proceedings (Guincho v. Portugal, Comm. Report 10.3.83, para. 72, Eur. Court HR, Series B no. 66, pp. 26-27). In this respect the Government note that, prior to 8 September 1994, the applicants did not press ahead with the proceedings in any manner. Furthermore, the Government admit that certain undue delays, in particular, prior to May 1993 and between September 1993 and November 1994, are imputable to the District Court. As a background, the Government submit that, in the relevant period, the District Court's workload was excessive and there were some three hundred cases assigned to the judge in charge.

The applicants submit that, given the lack of electricity, they could not use their business premises from 1991 until the expiry of their lease. The District Court did not take any action as to the merits of their case prior to 28 November 1994 and thereupon until 28 February 1996. The hearings scheduled for 3 November 1995 and 24 January 1996 were to be adjourned, since their representative was not duly summoned (cf. Sections 97 and 135/1/ of the Code of Civil Procedure). As to the Government's argument that, prior to September 1994, they failed to press ahead with the proceedings, the applicants submit that the District Court notified them only in October 1994 about the very existence of the action brought against them. The Code of Civil Procedure does not provide any means to advance the proceedings, in particular, prior to the notification of the action to the defendants (cf. Section 128 of the Code of Civil Procedure).

The Commission observes that the applicant's complaint relates to proceedings, which started in December 1991, i.e. prior to 5 November 1992, which is the date of the entry into force of the Convention 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 some eleven months prior to the Hungarian ratification of the Convention. 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 this date, 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 notes that the Regional Court delivered its judgment on 15 October 1996 and, on 19 November 1996, it corrected its judgment as to the settlement of procedural expenses. Consequently, the proceedings in question lasted about four years subsequent to the ratification.

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 parties 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 case related to the electricity supply of the applicants' business premises in the context of a trespass dispute and thus involved no issues of particular complexity.

As to the conduct of the parties, the Commission notes that none of the parties appears to have caused any particular delay in the case. As to the applicants' diligence in speeding up the proceedings, the

Commission notes that on 8 September 1994 they complained to the Ministry of Justice about the length of the proceedings. On 12 October 1994 they complained to the President of the Regional Court about the same. On 16 November 1994 they maintained their complaint.

As to the conduct of the judicial authorities, the Commission notes that in 1994 the judge in charge was requested to resign as a consequence of considerable delays having occurred in numerous actions assigned to her. On 7 October 1994 the applicants' case was assigned to another judge and was given priority treatment. On 28 November 1994 the District Court held a hearing. On 19 December 1994 the President of the Regional Court confirmed that he had taken administrative measures upon the applicants' complaint about the length of the proceedings. On 25 May 1995 the case was assigned to yet another judge. On 3 November 1995 the District Court held a hearing, to which the applicants' representative was not summoned; the District Court nevertheless heard the witnesses present. The hearing scheduled for 24 January 1996 had to be adjourned as the applicants' representative again had not been duly summoned. On 28 February 1996 the District Court held a hearing and dismissed the plaintiff's action. On 15 October 1996 the Regional Court upheld the first instance decision and, on 19 November 1996, it corrected its judgment.

The Commission recalls that, when assessing the reasonableness of the length of proceedings, the importance of what is at stake for the applicant in the litigation has to be taken into account (Eur. Court HR, Vallée v. France judgment of 26 April 1994, Series A no. 289-A, p. 17, para. 34; Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 25, para. 69). It is essential that certain types of litigation, such as custody cases (cf. Eur. Court HR, Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 26, para. 72) or employment disputes (cf. Eur. Court HR, Obermeier v. Austria judgment of 28 June 1990, Series A no. 179, p. 23, para. 72), be dealt with speedily. However, the nature and the circumstances of the present case did not warrant that the action be dealt with particular speediness.

The Commission considers that, subsequent to the ratification, some delays are imputable to the District Court, in particular, prior to 28 November 1994 and thereupon until 3 November 1995.

However, the Commission, having regard to the fact that the action at issue was dealt with by two court instances, finds that the delays which occurred do not, as a whole, appear substantial enough for the total length of the proceedings, i.e. about four years subsequent to the ratification, 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). The applicants' complaint about the length of proceedings does not, therefore, disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber