SUR LA RECEVABILITÉ

Application No. 26700/95
by János SOMOGYI
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 19 December 1994 by János SOMOGYI against Hungary and registered on 14 March 1995 under file No. 26700/95;

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 is a Hungarian citizen born in 1945 who resides in Budapest. He is a lawyer.

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

In May 1990 the applicant brought an action before the Veszprém District Court (Veszprémi Városi Bíróság) regarding the alleged voidness of a real estate exchange contract. In October 1990 the Court dismissed his motion to challenge the judge for bias. It appears that subsequently two court hearings took place in 1990/91. In July 1992, upon the applicant's request, the Court appointed a real estate expert.

On 24 March 1994 the Court established that the proceedings were interrupted, due to the death of one of the defendants. The Court ordered the other defendants to arrange for the legal successor of the deceased defendant to join the proceedings. They apparently failed to do so.

On 27 September 1994 the Court ordered the applicant to arrange for the legal successor of the deceased defendant to join the proceedings. On 24 April 1995 the Court again issued such an order and

informed him that, if the legal successor of the deceased defendant should not join the proceedings, they would be discontinued. On 15 May 1995 the applicant submitted to the Court that, in the absence of any other heir to the deceased defendant, the Hungarian State was the intestate successor to the deceased defendant and that he intended to involve the Hungarian State in the proceedings. On 18 May 1995 the Court ordered the applicant to show by a document issued by a notary public, that the Hungarian State was the legal successor in question.

On 7 November 1995 the Court held a hearing in the case and ordered the applicant to substantiate the amounts of his claim. The applicant alleges that this information, having been substantiated by an expert's opinion, had already been available to the Court as early as mid-1993.

On 7 March 1996 the Court held a hearing to which allegedly the applicant was not summoned. In the minutes taken at the hearing, the Court established that the applicant had been absent despite of his having been duly summoned. On 15 March 1996 the applicant requested the Court to rectify its findings laid down in the minutes taken at the hearing of 7 March 1996.

On 9 April 1996 the Court discontinued the proceedings. The Court considered that the applicant had revoked his claim against the State. The applicant's appeal against the decision of 9 April 1996 is pending before the Veszprém County Regional Court (Veszprém Megyei Bíróság).

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that the proceedings in question were unfair and the District Court was not impartial.

2. He further complains that the proceedings have lasted unreasonably long.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) that the proceedings were unfair and the District Court was 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 ... by an independent and impartial tribunal established by law."

As regards the alleged unfairness of the proceedings and partiality of the District Court, the Commission recalls that, under Article 26 (Art. 26) of the Convention, it may only deal with an application after all domestic remedies have been exhausted, according to the generally recognised rules of international law. In this respect the Commission notes that the applicant's appeal against the decision of 9 April 1996 discontinuing the proceedings are pending before the Veszprém County Regional Court. Accordingly, 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 have 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 Commission observes that the applicant's complaint relates to proceedings, which started in May 1990, i.e. 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 two and a half 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 notes that the proceedings in question have lasted so far for about three and a half years 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, 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 parties appear to have caused some delays between March 1994 and May 1995, namely, they failed to arrange for the participation of the legal successor of a defendant who had died in the course of the proceedings. Thus, a delay between March 1994 and September 1994 appears to be attributable to the defendants, and a delay of further eight months to the applicant.

As regards the conduct of the judicial authorities, the Commission finds that some delay occurred between the end of 1992 and March 1994. Moreover, the Veszprém District Court's conduct appears to have contributed to the delay following the interruption of the proceedings on 24 March 1994 until the next hearing in the case in November 1995. However, the delays on the courts' part do not, as a whole, appear substantial enough for the total length of the proceedings to date 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.

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