EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 54421/21
József Attila SZAXON
against Hungary

The European Court of Human Rights (First Section), sitting on 21 March 2023 as a Chamber composed of:

Marko Bošnjak*, President*,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Renata Degener, *Section Registrar,*

Having regard to the above application lodged on 26 October 2021,

Having regard to the observations submitted by the Hungarian Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns, in the context of divorce proceedings involving the applicant, the assessment – under Articles 6 and 13 of the Convention – of effectiveness of a new compensatory remedy for the protractedness of civil proceedings. The latter was introduced by Hungary in execution of the Court's pilot judgment in the case of *Gazsó v. Hungary* (no. 48322/12, 16 July 2015).

THE FACTS

2. The applicant was born in 1947 and lives in Bábolna. The applicant was represented by Mr D.A. Karsai, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

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

A. The circumstances of the case

5. On 12 February 2009, the applicant's wife filed a petition for divorce in the Komárom District Court. On 13 May 2009 the court's decision granting a divorce became final and binding; however, the case – in so far as it concerned the division of matrimonial property – continued.

6. On 25 March 2019, the Tatabánya High Court delivered a first-instance decision concerning the division of matrimonial property. On 1 October 2020, on appeal, the Győr Court of Appeal delivered a second-instance decision. The applicant initiated judicial-review proceedings against the second-instance decision before the *Kúria*, which upheld the first- and second-instance decisions on 15 June 2021.

7. On 29 August 2021 the applicant lodged a complaint with the Constitutional Court challenging the decisions delivered by the courts of first, second and third instance. On 13 June 2022 the Constitutional Court rejected the complaint.

B. Developments in national legislation

8. On 15 June 2021 Parliament adopted Act no. XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to the Protractedness of Civil Contentious Proceedings ((hereinafter, "the 2021 Act" – see paragraph 9 below). The 2021 Act reflected the judgment adopted by the European Court of Human Rights in the case of *Gazsó* (cited above). This Act entered into force on 1 January 2022. It was aimed at introducing a compensatory remedy for the protractedness of civil proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant legislation

9. The relevant provisions of the 2021 Act provide:

1. Scope of the Act
Section 1

"The scope of this Act shall cover the enforcement of claims for compensation in respect of the protractedness of contentious civil court proceedings (hereinafter: 'court proceedings')."

2. Calculating the duration of court proceedings and reasonable durations
Section 2

"(1) For the purposes of this Act, court proceedings shall last from the date of the commencement of the first-instance proceedings until the date of the publication of the final decision concluding the proceedings.

(2) The date of the commencement of the first-instance proceedings shall not be included in the calculation of the duration of the court proceedings.

(3) If the party enforcing the claim was present at the promulgation of the final decision concluding the proceedings, the date of the publication of the final decision concluding the proceedings shall be deemed to be the date of the promulgation; otherwise, it shall be deemed to be the date of the serving of the final decision on the party that is lodging the claim for compensation.

(4) For the purposes of this Act, in calculating the duration of court proceedings, a 'final decision concluding the proceedings' shall mean a decision concluding the first-instance or the second-instance proceedings depending on the level of jurisdiction at which the court proceedings were finally concluded. Where an application for judicial review is lodged against a final decision, the 'final decision concluding the proceedings' shall mean the judgment given in the review proceedings.

(5) A procedural phase lasts until the date of the adoption of the decision concluding the procedural phase."

Section 4

"(1) If a retrial is permitted by the court in question, the date of the commencement of the first-instance retrial proceedings shall be the date of the submission of the application for a retrial. The duration of the permitted retrial proceedings shall be added to the duration of the court proceedings giving rise to the retrial, with the proviso that the period between the publication of the final decision concluding the proceedings under this Act and the date of the submission of the application for a retrial shall not be included in the calculation of the duration of the court proceedings.

(2) If a retrial is not permitted by the court, the duration of the retrial proceedings shall not be included in the [calculation] of the duration of the court proceedings.

(3) For the purposes of this Act, the procedural phases of the retrial proceedings shall constitute separate procedural phases and shall not be added to the calculation of the procedural phases of the court proceedings giving rise to the retrial proceedings."

Section 5

"(1) If an application for judicial review is allowed on the merits by the *Kúria* of Hungary, the date of the commencement of the review proceedings shall be calculated as the day following the date of the adoption of the final decision giving rise to the application for judicial review. In the case mentioned in this paragraph, the duration of the review proceedings and the duration of the proceedings (or the procedural phase resumed upon a remittal ordered during the review proceedings) shall be added to the duration of the court proceedings giving rise to the review.

(2) If an application for leave to seek judicial review, or an application for judicial review is dismissed, or leave to seek judicial review is refused by the *Kúria*, the duration of the review proceedings shall not be included in the calculation of the duration of the court proceedings, save for the exception set out in subsection (3).

(3) If in uniformity-complaint proceedings the uniformity-complaint panel remits the case and the decision to the *Kúria* or orders the *Kúria* to conduct [judicial-review] proceedings, the date of the commencement of the uniformity-complaint proceedings shall be calculated as the day following the date of the adoption of the decision giving rise to the uniformity-complaint proceedings. In the case mentioned in this subsection, the duration of the uniformity-complaint proceedings, the duration of the judicial-review proceedings resulting in the refusal of the request for judicial-review proceedings and giving rise to the uniformity-complaint proceedings, and the duration of review proceedings resumed or conducted as a result of uniformity-complaint proceedings shall also be added to the calculation of the duration of the underlying court proceedings."

Section 6

"(1) Except in the case of the exceptions set out in subsections (3)-(5), the duration of court proceedings shall be regarded as reasonable if it does not exceed sixty months from the date of the commencement of the first-instance proceedings until the date of the notification of the final decision concluding the proceedings.

(2) Except in the case of the exceptions set out in subsections (3)-(5), the duration of a procedural phase shall be regarded as reasonable if

(a) the duration of the first-instance proceedings does not exceed thirty months,

(b) the duration of first-instance proceedings initiated in pursuit of an order for payment does not exceed thirty-six months,

(c) the duration of the second-instance proceedings does not exceed eighteen months; and

(d) the duration of the judicial-review proceedings does not exceed twelve months.

(3) In the event of a lawsuit relating to

a) personal status (*személyi állapotot érintő perek)*,

(b) the [financial] support of a minor child,

(c) a correction issued in a press rectification; or

(d) employment,

the duration of the court proceedings shall be regarded as reasonable if it does not exceed thirty-six months from the date of the commencement of the first-instance proceedings until the date of the publication of the final decision concluding the proceedings.

(4) In the event of a lawsuit such as one of those mentioned in subsection (3), the duration of a procedural phase shall be regarded as reasonable if

(a) the duration of the first-instance proceedings does not exceed eighteen months,

(b) the duration of first-instance proceedings initiated in pursuit of an order for payment does not exceed twenty-four months,

(c) the duration of any second-instance proceedings does not exceed twelve months; and

(d) the duration of any judicial-review proceedings does not exceed six months.

(5) A court examining a claim for damages may specify shorter periods than those set out in subsections (1)-(4) as reasonable for court proceedings or procedural phases if it comes to such a conclusion on the basis of an assessment of all the circumstances of the case in question; however, reasons for the ruling must be given in the decision concluding the proceedings.

(6) A court examining a claim for compensation may specify longer periods than those set out in subsections (1) and (3) as reasonable for court proceedings if the retrial proceedings are to be included in the duration of the underlying court proceedings and if the court comes to that conclusion on the basis of an assessment of all the circumstances of the case in question; however, reasons for the ruling must be stated in the decision concluding the proceedings."

3. Right to compensation
Section 7

"(1) A party shall be entitled to compensation if that party's fundamental right to engage in court proceedings within a reasonable time has been violated.

(2) If the duration of court proceedings or of the procedural phase that may be taken into account under section 15 exceeds a period of time regarded as reasonable, a party may lodge a claim for compensation in an amount tailored to reflect the period of time that may be taken into account, as determined by a Government Decree."

4. Enforcement of a claim before the court
Section 9

"(1) A claim for compensation shall be enforced against the first-instance court responsible for the excessive length of the court proceedings in question. If the first-instance court is not a legal person, the claim shall be enforced against the second-instance court in whose territorial jurisdiction the first instance court is located."

...

Section 10

"If a claim is enforced against a high court located in the territorial jurisdiction of the Budapest Court of Appeal, or the Szeged Court of Appeal, or the Pécs Court of Appeal, the Debrecen High Court shall have authority and exclusive jurisdiction to conduct non-contentious proceedings, whereas if a claim is enforced against a high court located in the territorial jurisdiction of the Győr Court of Appeal, or the Debrecen Court of Appeal, the Pécs High Court shall have authority and exclusive jurisdiction to conduct the non-contentious proceedings."

Section 13

"(1) The time-limit for a court's general obligation to undertake a measure shall be maximum fifteen days.

(2) The court shall take measures *ex officio* to obtain the necessary copies of the case file of the court proceedings to be examined.

(3) The court shall examine *ex officio* whether proceedings were or are being conducted before the Strasbourg Court in connection with the protractedness of the court proceedings indicated in the application lodged with the Strasbourg Court and, if

necessary, shall contact the Minister representing the State in the proceedings before the Court with a view to obtaining the relevant data.

(4) The court shall also reject the application if the party has already been awarded compensation under a final decision in respect of a certain phase of pending court proceedings and the party submits a claim for further compensation in respect of the same pending court proceedings within one year of the date on which the former decision awarding compensation became final."

Section 15

"(4) A period of time during which the progress of the proceedings is not facilitated and which has arisen through the fault of the court for reasons that could have been avoided and which has elapsed needlessly shall not be included in the [calculation of] the duration of the court proceedings or of the procedural phase if the applicant failed to lodge an objection against the protractedness of the proceedings, despite having had an opportunity under law to do so."

5. Final provisions
Section 21

"(1) This Act shall be applicable to claims for compensation relating to court proceedings pending at the time of the entry into force of this Act or commenced thereafter.

(2) Save for the exception set out in subsection (3), until 31 December 2022 the provisions of this Act shall be applicable, with the exception that a claim for compensation may only be enforced in respect of court proceedings concluded with a final decision.

(3) A party whose application (concerning the protractedness of court proceedings) has been lodged with the Court – and which had been registered but not yet decided on by the Court at the date of the entry into force of this Act – shall, within an absolute time-limit of four months from the entry into force of this Act – also be entitled to seek a claim for compensation on account of the protractedness of contentious civil court proceedings under this Act, unless at the time of the lodging of his application with the Court the time-limit applicable to his case under Article 35 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950 and promulgated by Act no. XXXI of 1993) had already expired."

10. The relevant provisions of Act no. CXXX of 2016 on the Code of Civil Procedure, as in force since 1 January 2018, provide:

Section 157
Objection to the protractedness of the proceedings

"(1) A party may submit an objection before the acting court in the case, if

a) a time limit is set by an act for the court to conduct the proceedings, to perform a procedural act, or to adopt a decision, and this time limit expired without result,

b) the court set a time limit for performing a procedural act, and this time limit expired without result, but the court did not apply the measures possible under this Act against the person on whose part the omission arose,

c) the court did not perform or arrange for the performance of a procedural act within a reasonable period that should have been sufficient to perform that act.

(2) The objection may be filed in writing with the acting court in the case, addressed to the competent court to adjudicate the objection, and requesting the competent court to adjudicate the objection to establish the omission, and in a situation described in paragraph (1) a) and c), to instruct the court responsible for the omission to perform the omitted procedural act or adopt a decision, or in a case described under paragraph (1) b), to take a measure that is most suitable in the case within an appropriate time limit.

(3) The objection may be withdrawn by the person who filed the objection until a decision on its merits is adopted by the court. An objection withdrawn may not be submitted again."

Section 344
Deadline for performance

"(1) As a rule, the court shall set a time-limit of fifteen days for the performance of the obligation established in the decision."

11. The relevant provisions of Government Decree no. 372/2021 (VI. 30.) on the amount of compensation to be afforded for a delay in civil proceedings and the rules for calculating the amount payable, as in force since 1 January 2022 provide:

Article 1

"(1) The amount of compensation due under section 7 of Act XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to the Protractedness of Civil Contentious Proceedings (hereinafter referred to as "the Pevtv.") shall be determined as a lump sum by multiplying the number of calendar days of the period of the court proceedings that may be taken into account under the Pevtv. by the daily amount specified in paragraph (2).

(2) The daily amount of such compensation shall be four hundred forints."

B. Relevant practice

12. On 27 October and 13 December 2022, the Debrecen Court of Appeal (*Debreceni Ítélőtábla)* – one of the two courts of final instance with jurisdiction to hear claims for compensation under the 2021 Act (see section 10 of the 2021 Act, as cited in paragraph 9 above) – adopted decisions nos. Pkf.II.20.345/2022/2. and Pkf.II.20.404/2022/2. *Inter alia*, the court evaluated the application of section 15(4) of the 2021 Act, under which delays (i) arising through the fault of the "domestic court and not facilitating the progress of proceedings and (ii) in respect of which an applicant failed to lodge an 'objection' (*kifogás*) should be deducted from the period that served as a basis for the calculation of compensation. The Court of Appeal held that section 15(4) could not be applied routinely. It emphasised that the question of whether the party claiming damages could be reproached for not having pursued an objection should always be assessed by means of a careful examination of the circumstances, that is to say, on a case-by-case basis. The court hearing the objection on protraction should analyse the purpose of the

legal provision underlying such an objection, its suitability for redressing the injury, and the conduct that the party seeking compensation might have been expected to adopt. The Court of Appeal also noted the relevant criteria reflected in the case-law of the Court, and the fact that, in respect of judicial decisions prior to 1 January 2022, the party involved could not know that a failure to object to a delay in proceedings would disqualify him or her from being able to lodge a claim for compensation for the violation of the "reasonable time" requirement. It further held that the provision should not be interpreted as requiring the deduction of periods in cases that had commenced before 1 January 2022 where the applicant had failed to lodge an objection to durations of inactivity falling within the purview of the domestic court if the failure of the domestic court to fulfil its procedural obligations within a reasonable time had not been of such magnitude as to render it obvious and clearly recognisable to a party. This was especially so since the remedy consisting in an 'objection' had already been found to be ineffective by the Court (see *Bartha v. Hungary*, no. 33486/07, 25 March 2014, and *Barna v. Hungary (no. 2)*, no. 35364/09, 25 March 2014).

C. Relevant Council of Europe documents

13. At its 1419th meeting held on 2 December 2021, at which was discussed the execution of the judgments in respect of the so-called *Gazsó v. Hungary* group (application no. 48322/12, which had concerned the excessive length of judicial proceedings in respect of civil, criminal and administrative matters, and the lack of an effective remedy in that respect), the Committee of Ministers of the Council of Europe adopted the following decision (CM/Del/Dec(2021)1419/H46-15):

> "The Deputies
>
> 1. recalled that this group of cases, the first of which became final in 2003, concerns the structural problem of excessive length of civil, criminal and administrative proceedings and the lack of effective domestic remedies; recalled further that in view of the scale of the problem the Court delivered a pilot judgment in the *Gazsó* case which set 16 October 2016 as the deadline for the introduction of an effective domestic remedy or combination of such remedies;
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> As regards individual measures
>
> 2. decided to close the examination of eleven repetitive cases in the group for which no further individual measures are required, as the just satisfaction was paid and the respective domestic proceedings have been terminated, and adopted Final Resolution CM/ResDH(2021)423; for the remaining cases, strongly urged the authorities to provide information on the outstanding issues, repeatedly requested since December 2018, namely on the payment of just satisfaction, the state of proceedings in the cases still pending at domestic level and the measures taken in this respect, by the end of December 2021;

As regards general measures

3. noted with interest the general positive trend revealed by the statistical data provided and encouraged the authorities to continue their efforts in resolving the problem of excessively lengthy court proceedings at the stage of prevention; strongly urged the authorities to provide more detailed statistical information on the length of proceedings before all three jurisdictions allowing a comprehensive assessment of the situation;

4. noted with satisfaction the adoption of the bill introducing a compensatory remedy for excessively long civil proceedings and its impending entry into force on 1 January 2022; with a view to avoiding the risk of an influx of new applications to the Court, firmly called on the authorities to ensure its Convention-compliant application and invited them to provide the Committee with concrete information on its implementation in practice, as well as a detailed analysis on the compliance with the Court's case-law of the levels of compensation regulated in the relevant Government Decree;

5. noted the authorities' timetable for preparing a proposal for a remedy covering other types of judicial proceedings by the end of June 2023; in light of the importance of the matter, its technical nature and the expiry of the deadline set by the Court in its pilot-judgment more than five years ago, strongly encouraged the authorities to explore any possible avenue for accelerating their planning;

6. requested the authorities to submit updated information on all the above issues by the end of June 2022 and decided to resume examination of this group of cases, in the light of the information received, at one of their Human Rights meetings in 2022 or 2023."

COMPLAINTS

14. The applicant complained under Article 6 § 1 of the Convention of the protractedness of the civil proceedings to which he had been a party. He also submitted under Article 13 of the Convention that he had not been afforded an effective domestic remedy in respect of his complaint under Article 6.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

15. The applicant complained that the length of the proceedings in his case had been unreasonable. He relied on Article 6 § 1 of the Convention, which reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

B. The parties' submissions

16. The Government submitted that the applicant had failed to exhaust the available domestic remedies available under the 2021 Act. Namely the

Government considered that under the transitional provisions of section 21(2) and (3) of the 2021 Act, the applicant could have claimed redress for the alleged violation of the "reasonable time" requirement, since the court proceedings in question had concluded with a final decision and the applicant had lodged a complaint that had been registered but not yet decided by the Court as at the date of the entry into force of the 2021 Act.

17. The applicant replied that the remedy introduced by the 2021 Act could not be regarded as effective. In any event, in his case, any requirement to use it would have amounted to a retroactive application of the law.

18. He argued firstly that there was no case-law regarding the application of the new remedy; therefore its effectiveness was dubious, and, in any event, it did not meet the criteria for an effective remedy according to the Court's case law. In particular, the applicant submitted that without any existing relevant case-law there had been no guarantee that the proceedings under the 2021 Act themselves would have concluded within a reasonable time or that the amount awarded by way of just satisfaction under the new remedy would have been paid within six months of the final decision. Moreover, the applicant contended that not all costs would have been recoverable under the 2021 Act and that the amount in respect of just satisfaction that could have been awarded under the new remedy was unreasonable in comparison with awards made by the Court in similar cases. He further submitted that the full period of the proceedings pending before the Constitutional Court and the period before the *Kúria* would not have been taken into account. Lastly, he submitted that section 15 (4) of the 2021 Act – according to which periods of inactivity on the part of the court that could have been avoided and against which the applicant had failed to lodge an objection could be deducted from the duration to be taken into account for the determination of the protractedness in question – seriously reduced the effectiveness of the remedy.

C. The Court's assessment

1. The pilot judgment

19. On 16 July 2015 the Court delivered a pilot judgment regarding the protractedness of civil proceedings in Hungary (see *Gazsó v. Hungary*, no. 48322/12, 16 July 2015). It found a breach of Articles 6 and 13 of the Convention, and held that (i) those violations had originated "in a recurring problem underlying the most frequent violations found by the Court in respect of Hungary", and (ii) Hungary "must introduce without delay, and at the latest within one year from the date on which this judgment becomes final, a remedy or a combination of remedies in the national legal system in order to bring it into line with the Court's conclusions" (ibid., §§ 22 and 39 and point 5 of the operative part).

20. In the present case, the Court will examine whether, in the light of, *inter alia*, the principles set out in its pilot judgment, the 2021 Act provided an effective remedy guaranteeing genuine redress for Convention violations originating in the protractedness of civil proceedings and, if so, whether the applicant has exhausted that remedy.

(a) The 2021 Act

(i) Assessment of the 2021 Act

21. The Court at the outset reiterates that in the light of its well-established case-law a compensatory remedy is an appropriate means of redressing a violation of the right to a hearing within a reasonable time that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI; and *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006-VII, with further references). It observes that a pecuniary remedy has been available under the 2021 Act since 1 January 2022 and that it may be used by parties to contentious civil court proceedings that end in a final and binding decision whose right to a hearing within a reasonable time has been violated and that such a party will be entitled to compensation (see paragraph 8 above). The amount of compensation will be calculated by multiplying the daily tariff (400 Hungarian forints (approximately 1 euro (EUR)) by the number of calendar days falling within the calculable period under the 2021 Act (see section 2 of the 2021 Act, as cited in paragraph 9 above).

22. As can be seen from section 6 of the 2021 Act (see paragraph 9 above), in assessing the reasonableness of the length of proceedings the national authorities are in essence required to look at the criteria established by the Court's case-law – namely, the complexity of the case, the applicant's conduct and that of the relevant authorities, and the importance of what is at stake for the applicant in the dispute (see, among many other authorities, *Kudła,* cited above, § 124; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. The Court further notes that under the transitional provisions listed in section 21 of the 2021 Act (see paragraph 9 above) a party whose application lodged with the Court in respect of the alleged protractedness of court proceedings has been registered – but not yet decided on – by the Court as at the date of the entry into force of the 2021 Act could, within four months from 1 January 2022, also lodge a claim for damages incurred in respect of the protractedness of contentious civil court proceedings, unless at the time of the submission of that party's application with the Court the time-limit applicable under Article 35 § 1 of the Convention had already expired.

24. The Court is also cognisant of the domestic practice (see paragraph 12 above) according to which the requirement under section 15(4) of the 2021 Act – namely, that parties to the domestic proceedings must exhaust a procedural objection in respect of delays attributable to a domestic court as a

prerequisite for such periods to be taken into account when calculating the amount in compensation to be awarded – is to be applied by the domestic courts on a case-by-case basis, with careful consideration. In particular, the domestic courts are to take into account the fact that parties to domestic proceedings before 1 January 2022 could not have been aware of this requirement for the purposes of the 2021 Act. The reasons underlying this approach include the fact that the Court has already ruled that the procedural objection referred to in section 15(4) of the 2021 Act is ineffective for the purposes of accelerating court proceedings, and does not therefore have to be exhausted for the purposes of complying with Article 35 § 1 of the Convention (see *Bartha v. Hungary*, no. 33486/07, 25 March 2014, and *Barna v. Hungary (no. 2)*, no. 35364/09, 25 March 2014). In the light of the relevant domestic case-law, the Court is satisfied that the impugned provision, whose application reflects the Court's case-law, does not render ineffective *a priori* the remedy provided by the 2021 Act.

25. The Court also observes that in its decision of 11 December 2021 (see paragraph 13 above), the Committee of Ministers of the Council of Europe welcomed the authorities' commitment to resolving the problem of the protractedness of civil proceedings and noted with satisfaction the adoption of the 2021 Act introducing a compensatory remedy for excessively long civil proceedings.

(ii) Conclusion

26. In the light of the above, the Court is satisfied that the 2021 Act has provided a remedy that is compensatory in nature, guaranteeing in principle genuine redress for Convention violations originating in the protractedness of contentious civil proceedings.

(b) Exhaustion of domestic remedies

(i) The relevant principles

27. The Court reiterates that, according to its established case-law, the purpose of the rule on the exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

28. However, the only remedies that the Convention requires to be exhausted are those that 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 *Scordino*

v. Italy (no. 1) [GC], no. 36813/97, § 142, ECHR 2006-V, with further references).

29. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective, given the particular circumstances of the case, or that there existed special circumstances allowing the requirement to be waived in his case (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

30. The application of this rule must make proper allowance for context. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether that rule has been observed it is essential to have regard to the particular circumstances of each individual case. This means, among other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant (ibid. § 69). It must examine whether, given all the circumstances of the case, the applicant did everything that could reasonably be expected in order to exhaust the available domestic remedies (see *EVT Company v. Serbia*, no. 3102/05, § 37 *in fine*, 21 June 2007).

(ii) Application of those principles to the present case

31. The Court has found above that the 2021 Act meets in principle the criteria set out in the *Gazsó* pilot judgment (cited above) (see paragraphs 21-25 above).

32. Turning to the arguments of the applicant, the Court finds no compelling reason to deem the new remedy offered by the 2021 Act to be ineffective.

33. The applicant firstly argued that there was no relevant case-law by which to determine the effectiveness of the new remedy. However, the Court observes that relevant case-law in respect of the application of the 2021 Act is in fact already available in public databases. It demonstrates that the remedy is functioning and dispels the doubts pertaining to the arguments of the applicant concerning the application of section 15(4) of the 2021 Act. This is in essence so because the domestic courts apply that provision in a manner that reflects the case-law of the Court (see paragraphs 12 and 24 above).

34. The Court likewise cannot subscribe to the applicant's arguments concerning the potential delays in any compensation proceedings, as the available case-law attests to the fact that two sets of such proceedings were concluded in a timely manner (that is, within less than twelve months) at two instances (see paragraph 12 above).

35. Moreover, the applicant argued that the amount that could have been awarded by way of just satisfaction under the new remedy was insufficient when compared to awards made by the Court in similar cases. The Court reiterates that the mere fact that compensation awarded to applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases will not render a length-of-proceedings remedy ineffective (see *Rišková v. Slovakia*, no. 58174/00, § 100, 22 August 2006). In accordance with the principle of subsidiarity, a wider margin of appreciation should be left to the domestic authorities in respect of the implementation of a pilot judgment and in assessing the amount of compensation to be paid. Such an assessment should be carried out in a manner consistent with their own legal system and traditions and take into account the standard of living in the country concerned – even if that results in awards of amounts that are lower than those fixed by the Court in similar cases (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 80, ECHR 2006-V; *Xynos v. Greece*, no. 30226/09, § 41, 9 October 2014 and, *mutatis mutandis*, *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 141, ECHR 2014; *Anastasov and Others v. Slovenia* (dec.), no. 65020/13, § 71, 18 October 2016;and *Hodžić v. Slovenia* (dec.), no. 3461/08, § 13, 4 April 2017).

36. Having regard to economic realities, the Court is satisfied that an award of about EUR 1 per day for the protracted period is acceptable within the Hungarian context. The Court emphasises in this connection that the subject matter of the present decision is the compatibility with the Convention of the domestic compensation scheme provided by the 2021 Act, and not the question of whether, in view of the sums awarded at the domestic level, the applicant has lost his victim status. This second type of assessment can be made, in every individual case, only after the relevant national remedy has been tried (see, *Scordino (no. 1)*, cited above, §§ 181 and 206; and, *mutatis mutandis, Anastasov and Others*, § 72; and *Hodžić*, § 15, both cited above).

37. The applicant also argued that no award by way of just satisfaction could be made in respect of the protractedness of proceedings before the *Kúria* and the Constitutional Court. However, the 2021 Act allows, under section 2(4) and section 6(2)(d), for compensation to be awarded in respect of delays in proceedings before the *Kúria* that last for more than twelve months. As regards the Constitutional Court, the Court accepts that its role of guardian of the Constitution sometimes makes it particularly necessary for it to take into account considerations other than the mere chronological order in which cases are entered on its list of cases such as the nature of a case and its importance in political and social terms (see *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 109 ECHR 2010). Therefore, the exclusion of a claimant pursuing a constitutional complaint from the compensation scheme provided by the 2021 Act does not render the remedy ineffective.

38. The Court further notes that – under section 9(4) of the 2021 Act – the Code of Civil Procedure applies, *inter alia*, to all matters not regulated by the

2021 Act. Consequently, under section 344 of the Code of Civil Procedure, if compensation is awarded, the judge must invite the State to make the payment within a time-limit of fifteen days from the date on which the decision was served.

39. The Court observes that in its decision of 2 December 2021 (see paragraph 13 above), the Committee of Ministers of the Council of Europe noted with satisfaction the adoption of the bill introducing a compensatory remedy for excessively long civil proceedings and its impending entry into force on 1 January 2022, but with a view to avoiding the risk of an influx of new applications to the Court, firmly called on the authorities to ensure its Convention-compliant application and invited them to provide the Committee with concrete information on its implementation in practice.

40. The Court also points out that it would be ready to change its approach in respect of the potential effectiveness of the remedies in question, should the practice of the domestic authorities show, in the long run, that domestic case-law is not in compliance with the requirements of the Convention (see, *Müdür Turgut and Others v. Turkey* (dec.), no. 4860/09, § 57, 26 March 2013, *Xynos*, cited above, § 49; and, *mutatis mutandis*, *Domján v. Hungary* (dec.), no. 5433/17, § 38, 14 November 2017, and *Szalontay v. Hungary* (dec.), no. 71327/13, § 39, 12 March 2019).

41. In view of the foregoing, basing its conclusions on an assessment of the legislative provisions as they stand and the available domestic practice, the Court is satisfied that the compensatory remedy provided by the 2021 Act is an effective remedy, capable of affording adequate redress for any violation that has already occurred.

42. At this juncture, the applicant argued that for him to have been required to avail himself of the new remedy under the transitional provision referred to in paragraph 23 above would have amounted to a retroactive application of the law, which is unacceptable.

43. The Court notes that the applicant was in the situation described by the transitional provision in section 21(3) of the 2021 Act, which allowed complainants to pursue the new remedy even if their cases were pending before the Court. The remedy was therefore available to him for four months following the entry into force, on 1 January 2022, of the 2021 Act.

44. It further notes that one of the aims of the 2021 Act is evidently to ensure the effective application at domestic level of the "reasonable time" principle so as to comply with the *Gazsó* judgment. It is true that the present application had been lodged before the 2021 Act came into force and that, consequently, at the time when the applicant first lodged his complaint with the Court, he did not have an effective remedy available under Hungarian law in respect of the length of the proceedings in issue. In this connection, the Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application in question was lodged with it. However, this rule is subject to

exceptions, which may be justified by the particular circumstances of each case (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 87, ECHR 2010).

In particular, the Court has previously departed from this general rule in cases, for example, against Italy, Croatia, Slovakia and Poland concerning remedies against the excessive length of proceedings (see *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX); *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V, and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). Among such exceptions are also situations where, following a pilot judgment on the merits in which the Court found a systemic violation of the Convention, the respondent State has made available a specific remedy to redress at the domestic level grievances of persons in a similar situation (see *Hodžić*, cited above, with references to *Łatak v. Poland*, no. 52070/08, § 79, 12 October 2010; *Stella and Others v. Italy* (dec.), no. 49169/09, § 41, 16 September 2014; and *Taron v. Germany* (dec.), no. 53126/07, § 36, 29 May 2012).

As in the present case, the remedies under consideration were enacted to redress at a domestic level the Convention grievances of persons whose applications pending before the Court concerned similar issues.

45. The Court considers that several factors in the instant case justify a departure from the general principle that the exhaustion requirement must be assessed with reference to the time at which the application was lodged. It observes, in particular, that the growing frequency with which it has found violations by the Hungarian State of the "reasonable time" requirement has led it to conclude that the accumulation of such breaches constitutes a practice that is incompatible with the Convention, and to draw the Government's attention to the problem – notably in the *Gazsó* judgment. It has also observed that the lack of an effective remedy in respect of the excessive length of civil proceedings has forced individuals to apply systematically to the Court when their complaints might have been dealt with more appropriately, in the first place, by the domestic legal system. In the long term, that situation is likely to affect the operation, at both national and international level, of the system of human rights protection set up by the Convention (see, *mutatis mutandis*, *Kudła,* cited above, § 155).

46. The purpose of the remedy introduced by the 2021 Act is to enable the authorities of the respondent State to redress breaches of the "reasonable time" requirement and, purportedly, to reduce the number of applications for the Court to consider. That is true not only of applications lodged after the date on which the Act came into force, but also of those which were already on the Court's list of cases by that date.

47. In this connection, particular importance should be attached to the fact that the transitional provision in section 21(3) of the 2021 Act refers explicitly to applications already registered by the Court and is therefore designed to bring within the jurisdiction of the national courts all applications currently pending before the Court that have not yet been decided on. The provision in question affords Hungarian litigants a genuine opportunity to obtain redress for their grievances at the national level; in principle, it is for them to avail themselves of that opportunity (see also *Charzyński,* cited above, §§ 40-41).

48. In the light of the foregoing, the Court considers that the applicant was required by Article 35 § 1 of the Convention to lodge a claim under the relevant sections of the 2021 Act. Furthermore, there do not appear to be any exceptional circumstances capable of exempting him from the obligation to exhaust the available domestic remedies.

49. The Court therefore considers that this complaint is inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

D. Alleged violation of Article 13 of the Convention

50. The applicant complained that he had not had an effective domestic remedy in relation to his complaint under Article 6, in breach of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

51. The Court has found that the new remedy represented by the 2021 Act is in principle effective for the purposes of Article 35 § 1 of the Convention (see paragraph 41 above). In view of the close link between that provision and Article 13, this finding is equally valid within the context of this complaint (see *Atanasov and Apostolov v. Bulgaria* ((dec.), nos. 65540/16 and 22368/17, § 72, 27 June 2017).

52. It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 March 2023.

Renata Degener Registrar	Marko Bošnjak President