CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36186/97
by György TÍMÁR
against Hungary

The European Court of Human Rights, sitting on 19 March 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 30 March 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 3 May 2001,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr György Tímár, is a Hungarian national, who was born in 1937 and lives in Budapest.

The applicant's previous applications (nos. 23209/94 and 27313/95) to the European Commission of Human Rights ("the Commission") were joined and declared inadmissible by the Plenary Commission on 13 January 1997.

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

A. The circumstances of the case

On 18 November 1965 the Budapest Regional Court, in the context of criminal proceedings with some political connotations, convicted the applicant of espionage and sentenced him to six and a half years' imprisonment. The Court also ordered the confiscation of his property. On 23 February 1966 the Supreme Court, upon the applicant's appeal, amended the first-instance judgment in that the criminal offence was qualified as attempted sedition and the prison term was reduced to five years. The remainder of the appeal was dismissed. Subsequently the applicant served his sentence. His property, namely his villa and garden as well as his car and his money in a bank, was confiscated.

On 25 October 1989 the Attorney General lodged an appeal on legal grounds with the Supreme Court against the judgments of 1965 and 1966, and proposed that the applicant's conviction be quashed as being unlawful and that the applicant be acquitted. On 12 December 1989 the Supreme Court followed this proposal.

On 6 February 1990 the applicant instituted proceedings before the Budapest Regional Court claiming restitution of his property. He further claimed compensation as a victim of a miscarriage of justice. In the proceedings concerning the latter claims, on 19 February 1993 the Regional Court awarded him four million Hungarian forints (HUF) as compensation for damage suffered as a consequence of his imprisonment.

In the restitution proceedings, between September 1990 and February 1992 the Regional Court held several hearings. Moreover, taking into account the fact that both the confiscated car and real estate had been sold in the past and that, therefore, their restitution was excluded, only compensation being possible, the court took expert evidence as to the value of this property. The Technical Institute of Judicial Experts prepared an opinion on that question.

On 24 February 1992 the Regional Court, following a further hearing, issued an order awarding the applicant HUF 50,000 for the car, plus HUF 6,200,000 in compensation for his losses. The remainder of his claims was dismissed. The applicant lodged an appeal with the Supreme Court sitting as a second instance, claiming higher compensation.

On 10 December 1992 the Supreme Court considered the case by way of a written procedure, in accordance with Article 269 (4) of the Code of Criminal Procedure, which provided that appeals against court orders were to be dealt with at *in camera* deliberations rather than hearings, unless the taking of evidence was necessary. The Supreme Court, in its second-instance role, dismissed the applicant's appeal.

On 12 February 1993 the Attorney General, reacting to the applicant's request to seek review of the Supreme Court's decision, informed him that restitution proceedings were governed by the Code of Criminal Procedure, which excluded a review in his case. The Attorney General also observed that a request for review in civil proceedings could only be submitted in respect of civil court decisions.

On 19 February 1993 the applicant nevertheless lodged a petition for review with the Supreme Court, complaining of the Budapest Regional Court's decision, as well as of the second-instance decision taken by the Supreme Court.

On 22 June 1993 the Supreme Court rejected his petition for review.

On 5 April 1995 the Constitutional Court decided that the application of procedural rules assigning restitution cases to the criminal courts, and excluding a review by the Supreme Court, amounted to arbitrary discrimination. The Constitutional Court amended the said rules to the effect that the files should be forwarded to the civil courts with a view to conducting the proceedings. Concerning the applicant's particular case, it decided that he should be entitled to institute civil review proceedings before the Supreme Court.

The applicant's renewed petition for review dated 8 April 1995 was received at the Supreme Court on 10 April 1995. He filed further submissions on 10 and 13 May 1995.

On 19 October 1995 the Supreme Court rejected the renewed petition. It noted the background to the applicant's case, i.e. his conviction in 1965/66 and his acquittal in 1989, as well as the course of the restitution proceedings. In particular, it observed that it had rejected the applicant's previous petition for review in June 1993. However, as the Code of Criminal Procedure only envisaged the possibility of one such review petition, it had to reject any further petition brought by the same person.

On 12 February 1996 the Constitutional Court dismissed the applicant's further constitutional complaint. It considered that the applicant's submissions did not raise any questions of constitutionality within the meaning of the relevant provisions of the Constitutional Court Act, but were limited to complaining that the Supreme Court had failed properly to implement the Constitutional Court's earlier decision. To the extent that the applicant, in his submissions, pursued his petition for review, the Constitutional Court referred the case to the Budapest Regional Court for further action, being the competent court for the civil procedure.

On 7 March 1996 the Budapest Regional Court forwarded the files to the Supreme Court for a decision on the applicant's petition for review.

On 12 November 1996 the Supreme Court again rejected the applicant's petition for review. It explained that, according to the relevant provisions of the Code of Civil Procedure, no review could take place in proceedings of the present kind. Subsequently the applicant brought a further complaint before the Constitutional Court with a view to the annulment of that decision.

On 9 June 1998 the Constitutional Court declared unconstitutional the procedural situation governing the examination of criminal restitution claims in civil review proceedings.

Following the resultant change in legislation, on 15 February 2000 the Supreme Court annulled its decision of 12 November 1996 and ordered a review of the merits of the applicant's restitution claims.

On 25 June 2001 the Supreme Court's review bench considered the case by way of a written procedure, in accordance with Article 274 (1) of the Code of Civil Procedure, which provided that petitions for the review of a court order were to be dealt with at *in camera* deliberations on the case-file rather than by way of hearings. The Supreme Court dismissed the applicant's petition for review on its merits. It held that the lower courts' procedure, and in particular the manner of taking evidence – although it had been governed by the rules of criminal procedure concerning restitution – had been in compliance with the Code of Civil Procedure. That decision was served on 6 August 2001.

B. Relevant domestic law

Article 339 (1) of the Civil Code provides that any person who unlawfully causes damage to another shall be liable to pay compensation.

According to Article 349, the official liability of the State administration may be established only if the relevant ordinary remedies have been exhausted or have not been found adequate to redress the damage. Unless otherwise specified, this provision also covers the liability for damage caused by the courts or the prosecution authorities.

THE LAW

1. The applicant's first complaint relates to the length of the proceedings and Article 6 § 1 of the Convention, which provides as relevant:

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

The Government argue that the applicant has not exhausted the domestic remedies available to him under Hungarian law in that he did not bring an official liability action under Article 349 of the Civil Code in order to claim compensation for the allegedly protracted proceedings. The Government rely on the Court's Cardot v. France judgment of 19 March 1991 (Series A no. 200) in support of their submission.

The applicant contests this argument.

The Court recalls that Article 35 § 1 of the Convention provides *inter alia*:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

In this connection, the only remedies to be exhausted are those which 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 the Vernillo v. France judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

As regards a complaint that domestic court proceedings have lasted an unreasonably long time, the Court has accepted that the availability of an action in damages may be relevant for the purposes of Article 35 § 1 of the Convention (see, among other authorities, the aforementioned Vernillo judgment, *loc. cit.*; *Kudła v. Poland* [GC], no. 30210/96, § 159; *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

The Government rely on Article 349 of the Civil Code. However, the Court is not persuaded that this remedy would be effective for a complaint about a delay in the administration of justice. The Government have not submitted any precedents illustrating the interpretation of Article 349 by the domestic courts and its practical application to length complaints (cf. *Giummarra and others v. France* (dec.), no. 61166/00, 12 June 2001). It is true that an applicant is not exonerated from the requirement to exhaust a particular domestic remedy merely because he has doubts as to its outcome. However, in the Court's opinion and in the circumstances of the instant case, to oblige the applicant to test the scope of Article 349 in the absence of any precedent would result in an excessively rigid and formalistic approach to the exhaustion requirement (see, *mutatis mutandis*, the aforementioned Cardot v. France judgment, p. 18, § 34).

As to the Government's reliance on the Cardot case, the Court would observe that Mr Cardot did have a remedy at his disposal whose effectiveness had been proven over the years, unlike the present state of domestic case-law in the instant case.

In these circumstances, the Court concludes that the applicant's complaint cannot be rejected for non-exhaustion of domestic remedies.

2. The Court notes that it has not been disputed that the proceedings began on 6 February 1990 and ended on 6 August 2001, with the service of the Supreme Court's review decision. They therefore lasted eleven and a half years before three levels of jurisdiction and the Constitutional Court.

The Court observes that, when examining the length of the proceedings, the period to be considered begins on 5 November 1992, the date of the Convention's entry into force in respect of Hungary. However, in assessing the reasonableness of the time that elapsed after this date, account must be taken of the then state of proceedings (see the Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

3. The applicant renews his complaints that the domestic courts reached erroneous conclusions in the case and that the Supreme Court dealt with his case '*in camera*'. The Court rejected this as being premature in May 2001, but the matter is now ready for examination, as the proceedings have come to an end.

In so far as the applicant's complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, according to Article 19 of the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 § 1 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the present case – in so far as the proceedings fall within the Court's competence *ratione temporis* – the Court considers that the applicant's submissions do not disclose any evidence that the domestic courts lacked impartiality.

As regards the complaint about the Supreme Court's deliberations, the Court notes that the Regional Court held several public hearings, whereas the Supreme Court, sitting initially as a second, then as a review instance,

held only *in camera* deliberations, in accordance with the relevant procedural law. However, in the Court's view, whilst the present case, involving a unique procedure for the applicant's case, attracts some of the guarantees of Article 6, such as the reasonable time requirement, the fact that the first-instance hearings were followed by written procedures, does not entail any appearance of unfairness (cf., *mutatis mutandis*, Ekbatani v. Sweden judgment of 26 May 1988, Series A no. 134, p. 14, § 31).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning the length of the restitution proceedings;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President