AS TO THE ADMISSIBILITY OF

Application No. 31973/96
by Ráfael ÚRI
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 10 September 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIČ
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 15 April 1996 by Ráfael ÚRI against Hungary and registered on 19 June 1996 under file No. 31973/96;

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 7 January 1997 and the observations in reply submitted by the applicant on 5 March 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1950, is a Hungarian national. He resides in Szilvásvárad, Hungary. He is a dispatcher.

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 July 1988 the applicant's wife brought a divorce action against the applicant before the Eger District Court (Egri Városi Bíróság). She also claimed that custody over their children be granted to her and that the applicant be ordered to pay child maintenance.

In November 1988 the applicant brought a counter-action. He claimed, inter alia, that marital property be shared, that custody over their children be granted to him and that his wife be ordered to pay child maintenance.

Between 8 November 1988 and 6 February 1992 the District Court held altogether twelve hearings in the case.

Meanwhile, in March 1989 the Eger District Court, upon charges raised by the applicant's wife, convicted the applicant of failure adequately to supervise and care for his children (kiskorúak veszélyeztetése) and sentenced him to ten months' imprisonment. His appeal was to no avail. In December 1989 the Heves County Regional Court (Heves Megyei Bíróság) admitted the applicant's request for re-trial. In October 1990 the District Court, as confirmed by the Regional Court in March 1991, acquitted the applicant. In September 1991 the applicant requested the District Court's panel in charge of the divorce action to take his acquittal into consideration, when deciding about the custody over the children.

On 30 March, 27 April and 22 June 1993 the District Court held further hearings in the case. Meanwhile, the applicant extended his action by compensation claims concerning the use of the parties' municipal flat.

On 8 October 1993 the District Court appointed an expert psychologist who presented his opinion on 7 December 1993.

On 21 June 1994 a further hearing was held, where the parties rectified and finalised their claims.

On 29 June 1994 the District Court pronounced the divorce. The District Court awarded the custody over two of the parties' children to the plaintiff, whereas the custody over the third child was adjudicated to the applicant. The District Court ordered the applicant to pay child maintenance to the plaintiff. It arranged for the access to the

children in respect of both parties, divided the right to use the parties' flat between them and arranged for the separation of their marital property. In the reasoning of its decision, the District Court relied on evidence given by numerous witnesses and on the expert psychologist's opinion.

On 6 and 11 July 1994, respectively, the parties lodged appeals.

On 14 December 1994 and 14 February 1995 the Heves County Regional Court held hearings.

On 8 May 1995 the Regional Court upheld in essence the first instance decision, but granted the right to use the flat in question solely to the plaintiff, ordering her to pay compensation therefor to the applicant.

On 16 August 1995 the applicant brought a petition for review before the Supreme Court (Legfelsőbb Bíróság).

On 20 October 1995 the Supreme Court returned the applicant's petition for supplementation.

On 28 November 1995 the Supreme Court rejected ex officio the applicant's petition for review. The Supreme Court found that the applicant had, despite due notification, failed to remedy the formal shortcomings of his petition. This decision was served upon the applicant on 3 January 1996.

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 Törvénykönyvről szóló 1959. évi IV. törvény).

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.

COMPLAINT

The applicant complains 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 15 April 1996 and registered on 19 June 1996.

On 16 October 1996 the Commission decided to communicate the applicant's complaint about the length of the civil court proceedings to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure, and declared inadmissible the remainder of the application which concerned complaints about the alleged unfairness of the criminal and civil court proceedings.

The Government's written observations were submitted on 7 January 1997.

On 5 March 1997 the applicant submitted observations in reply to the respondent Government's observations.

THE LAW

The applicant complains about the length of the proceedings.

Article 6 para. 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 applicant has not exhausted the domestic remedies available to them under Hungarian law in that he 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 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 (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 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 applicant is 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 submit that the subject matter of the case was rather complicated: the parties' claims concerned, within the context of a divorce action, the inventory, valuation and separation of marital property and, moreover, issues of child custody, parental access and child maintenance. Parallel to the divorce proceedings, the applicant was first convicted, then acquitted of the offence of failure adequately to supervise and care for his children - a consideration relevant to the adjudication of child custody. As to the conduct of the parties, the Government submit that the parties did not proceed with the required diligence in pursuing their actions; their bitter personal relations and lack of co-operation before the courts impeded the proceedings. The Government point out that they amended their respective actions even at the last hearing before the District Court. Furthermore, the Government are of the opinion that the courts' handling of the case was beyond any criticism: there occurred no periods of inactivity either on the part of the District Court or of the Regional Court. The applicant contests these views.

The Commission observes that the applicant's complaint relates to proceedings, which started in 1988, 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 about four years and three 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 Supreme Court rejected ex officio the applicant's petition for review on 28 November 1995 and that this decision was served upon him on 3 January 1996. The proceedings in question thus lasted about three years and two months subsequent to 5 November 1992.

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 a divorce action involving questions of the inventory, valuation and separation of marital property and, moreover, of child custody, parental access and child maintenance. The Commission finds that no issues of particular complexity were concerned.

As to the conduct of the parties, the Commission considers that some delay in terminating the review proceedings can be attributed to the applicant. The Commission notes in this respect that on 16 August 1995 the applicant brought before the Supreme Court a petition for review, apparently in default of some formal requirements, which was returned for supplementation by the Supreme Court on 20 October 1995. As a consequence of the applicant's failure to comply with the supplementation order, on 28 November 1995 the Supreme Court rejected the petition ex officio. Otherwise, none of the parties appears to have caused any considerable delay in the case.

As to the conduct of the judicial authorities, the Commission observes no substantial periods of inactivity apart from some delay between 7 December 1993, when the expert psychologist presented his opinion and 21 June 1994, when the next hearing was held afterwards.

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.

Even, however, taking into account the nature of the litigation complained of, the Commission, having regard to the fact that the action at issue was dealt with by three court instances, finds that overall length of the proceedings, i.e. about three years and two months subsequent to the Convention's entry into force in regard to Hungary, does not appear substantial enough 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 applicant's complaint about the length of proceedings does not, therefore, disclose any appearance of a violation of Article 6 para. 1 of the Convention.

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

For these reasons, the Commission, unanimously,

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber