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Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 19/10/2021

DH-DD(2021)1067

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Meeting: 1419th meeting (December 2021) (DH)

Communication from the authorities (15/10/2021) concerning the GAZSO group of cases v. Hungary (Application No. 48322/12)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419^e réunion (décembre 2021) (DH)

Communication des autorités (15/10/2021) relative au groupe d'affaires GAZSO c. Hongrie (requête n° 48322/12) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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15 OCT. 2021

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TÍMÁR GROUP

Information Note

**Appl. No. 48322/12 GAZSÓ group v. Hungary, pilot judgment of 16/07/2015,
final 16/10/2015**

15 October 2021

Referring to the decision of the **1406th meeting, 7-9 June 2021** CM-DH in **Gazsó group v. Hungary (Application No. 48322/12)**, the Government of Hungary have the honour to submit the following information:

1.) The new Act No. XCIV on the Enforcement of Pecuniary Satisfaction Relating to Protraction of Civil Contentious Proceedings was passed by the Parliament on 15 June 2021. The English translation of the Act is the following:

Act No. XCIV of 2021

on the Enforcement of Pecuniary Satisfaction Relating to Protraction of Civil Contentious Proceedings

The National Assembly,

with a view to promoting the efficiency of the judicial activity,

for the purpose of fulfilling the right of persons seeking justice to fair proceedings within a reasonable time, and

in the interest of creating an effective remedy for protractions of civil contentious court proceedings

in order to implement Article XXVIII (1) of the Fundamental Law of Hungary,

enacts the following Act:

1. Scope of the Act

Section 1

The scope of this Act shall cover the enforcement of claims for pecuniary satisfaction relating to protractions of civil contentious court proceedings (henceforth: 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 commencement of the first instance proceedings to the date of notification of the final decision terminating the proceedings.
- (2) The date of commencement of the first instance proceedings shall not be included in the duration of the court proceedings.
- (3) If the party enforcing the claim has been present at the promulgation of the final decision terminating the proceedings, the date of notification of the final decision terminating the proceedings shall be the date of promulgation, otherwise the date of service.
- (4) For the purposes of this Act, in calculating the duration of the court proceedings, a final decision terminating the proceedings shall mean a decision terminating the first instance or the second instance proceedings, depending on at which court level the court proceedings were finally terminated. Where a petition for review is lodged against a final decision, the final decision terminating the proceedings shall also mean the judgment given in the review proceedings.
- (5) A procedural phase lasts till the date of the adoption of the decision terminating the procedural phase.

Section 3

- (1) The date of commencement of the first instance proceedings shall be the day on which the statement of claim is submitted. In case of a lawsuit preceded by order for payment proceedings, the date of the submission of the application for an order for payment shall constitute the date of the commencement of the first instance proceedings.
- (2) If an appeal is determined by the court on the merits, the date of commencement of the second instance proceedings shall be the day following the date of the adoption of the decision terminating the first instance proceedings. In the case mentioned in this subsection, in calculating the duration of the court proceedings the duration of the second instance proceedings shall be added to the duration of the first instance proceedings.
- (3) If the appeal is rejected by the court, the duration of the second instance proceedings shall not be included in the duration of the court proceedings.
- (4) The duration of the resumed proceedings or resumed procedural phase and the duration of the proceedings following a final interim judgment shall be added to the duration of the court proceedings. The date of commencement of the resumed proceedings shall be the day following the date of the adoption of the decision remitting the proceedings and the decision. The date of commencement of the proceedings following the adoption of a final interim judgment shall be the day following the date on which the interim judgment became final.

The date of commencement mentioned in this subsection shall be included in the duration of the court proceedings.

(5) The resumed procedural phase and the procedural phase following the adoption of a final interim judgment shall be added to the corresponding procedural phases of the court proceedings.

Section 4

(1) If retrial is permitted by the court, the date of commencement of the first instance retrial proceedings shall be the date of the submission of the request for 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 notification of the final decision terminating the proceedings under this Act and the date of the submission of the request for retrial shall not be included in the duration of the court proceedings.

(2) If retrial is not permitted by the court, the duration of the retrial proceedings shall not be included in 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 procedural phases of the court proceedings giving rise to the retrial proceedings.

Section 5

(1) If a petition for review is determined on the merits by the Curia of Hungary, the date of commencement of the review proceedings shall be the day following the date of the adoption of the final decision giving rise to the petition for 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 remittal ordered in the review proceedings shall be added to the duration of the court proceedings giving rise to the review.

(2) If the application for leave to review, or the petition for review is rejected, or leave to review is refused by the Curia of Hungary, the duration of the review proceedings shall not be included in 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 proceedings and the decision to the Curia of Hungary or orders the Curia of Hungary to conduct the review proceedings, the date of commencement of the uniformity complaint proceedings shall be 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 review proceedings resulting in the rejection of the request and giving rise to the uniformity complaint proceedings, and the duration of the review proceedings resumed or conducted upon the uniformity complaint proceedings shall also be added to the duration of the underlying court proceedings.

Section 6

(1) With the derogations set out in subsections (3)–(5), the duration of the 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 to the date of the notification of the final decision terminating the proceedings.

(2) With the derogations 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 the first instance proceedings started as order for payment proceedings 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 review proceedings does not exceed twelve months.

(3) In case of a lawsuit relating to

a) personal status,

(b) the support of a minor child,

(c) 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 to the date of the notification of the final decision terminating the proceedings.

(4) In case of a lawsuit 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 the first instance proceedings started as order for payment proceedings does not exceed twenty-four months,

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

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

(5) The court determining a claim for pecuniary satisfaction may specify shorter periods than the ones set out in subsections (1)–(4) as reasonable for the court proceedings or the procedural phases if it comes to such a conclusion based on the assessment of all the circumstances of the given case; however, reasons for the ruling shall be stated in the decision terminating the proceedings.

(6) The court determining a claim for pecuniary satisfaction may specify longer periods than the ones set out in subsections (1) and (3) as reasonable for the court proceedings if the retrial proceedings are to be included in the duration of the underlying court proceedings and the court comes to such a conclusion based on the assessment of all the circumstances of the given case; however, reasons for the ruling shall be stated in the decision terminating the proceedings.

3. Right to pecuniary satisfaction

Section 7

(1) A party shall be entitled to pecuniary satisfaction if his fundamental right to court proceedings within a reasonable time has been violated.

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

Section 8

(1) No pecuniary satisfaction shall be payable to a party if the European Court of Human Rights (henceforth: the ECtHR) has ordered the State to pay just satisfaction to the party for the violation of his fundamental right to court proceedings within a reasonable time in respect of the entire duration of the court proceedings under this Act.

(2) Where the ECtHR has ordered the State to pay just satisfaction to the party for the violation of his fundamental right to court proceedings within a reasonable time in respect of a part of the period of the court proceedings that can be taken into consideration under this Act, the amount of just satisfaction awarded by the ECtHR shall be included in the amount of pecuniary satisfaction awardable in respect of the same court proceedings under this Act. In such a case, the party shall only be entitled to the amount remaining after the set-off as pecuniary satisfaction.

(3) If in a final decision the court awarded pecuniary satisfaction payable to the party in respect of a specific period of the court proceedings, any further claim for pecuniary satisfaction in respect of the same court proceedings may only be made in relation to the period not adjudicated yet from the aspect of pecuniary satisfaction. In the latter case, in calculating the period of the court proceedings that may be taken into consideration the period established in the former proceedings shall also be taken into account in assessing whether the conditions are met, and in examining the quantity of the claim.

4. Enforcement of a claim before the court

Section 9

(1) A claim for pecuniary satisfaction shall be enforced against the first instance court having proceeded in the court proceedings giving rise to pecuniary satisfaction. If the court having

proceeded at first instance is not a legal person, the claim shall be enforced against the high court in whose territorial jurisdiction the district court having proceeded at first instance is located.

(2) The court shall determine the claim for pecuniary satisfaction in civil non-contentious proceedings (henceforth: non-contentious proceedings). In the non-contentious proceedings, only documentary evidence shall be admissible.

(3) In the non-contentious proceedings, no trainee judge shall proceed.

(4) To procedural matters not otherwise regulated under this Subtitle, the provisions of Act No. CXXX of 2016 on the Code of Civil Procedure (henceforth: Code of Civil Procedure) shall be applicable with the derogations resulting from the special features of the non-contentious proceedings, as well as the general provisions applicable to civil non-contentious court proceedings of Act No. CXVIII of 2017 on the Rules Applicable to Civil Non-Contentious Court Procedures and to Certain Non-Contentious Court Procedures.

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 competence and exclusive jurisdiction to conduct the 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 competence and exclusive jurisdiction to conduct the non-contentious proceedings.

Section 11

(1) In order for payment proceedings no claim for pecuniary satisfaction shall be enforced.

(2) A claim for pecuniary satisfaction may be enforced in respect of both pending court proceedings and court proceedings terminated under a final decision before a court having competence and jurisdiction to conduct the non-contentious proceedings.

(3) As to pending court proceedings, a claim may only be enforced if the duration of the court proceedings or of the procedural phase giving rise to the claim enforcement has already exceeded the time regarded as reasonable under section 6 subsections (1)–(4).

(4) If in relation to pending court proceedings the court has awarded pecuniary satisfaction to a party under a final decision in respect of a given phase of the court proceedings, the party may only file another claim for pecuniary satisfaction in relation to the same pending court proceedings after the elapse of one year from the date on which the decision on the merits of the claim for pecuniary satisfaction became final.

(5) If during the conduct of the non-contentious proceedings instituted for enforcing a claim for pecuniary satisfaction in respect of court proceedings terminated under a final decision retrial or review proceedings related to the terminated proceedings are instituted and can be

included in the duration of the court proceedings, the court proceedings under examination shall be regarded as being pending for the purposes of this Act.

(6) A party may commence non-contentious proceedings for the enforcement of his claim in relation to court proceedings terminated under a final decision within an absolute time limit of four months from the date of receipt of the final decision terminating the court proceedings.

Section 12

(1) The application starting the non-contentious proceedings (for the purposes of this Subtitle, henceforth: the application) shall state:

(a) the name of the court conducting the non-contentious proceedings and the particulars from which the competence and jurisdiction of that court can be ascertained,

(b) the name, domicile, or principal place of business of the applicant and his representative, and the ground of eligibility for filing the application,

(c) the defendant's name and address,

(d) the right sought to be enforced,

(e) the name of the first instance court having conducted the court proceedings and the first instance court case number, the names of the parties to the court proceedings and the subject-matter of the court proceedings,

(f) the duration of the court proceedings or the procedural phase to which the claim relates, calculated in accordance with this Act,

(g) the amount of the pecuniary satisfaction calculated by the claimant under the provisions of this Act and of the Government Decree on the Size of Pecuniary Satisfaction Related to Protraction of Civil Contentious Proceedings and on the Rules for Calculating the Amount Payable,

h) if proceedings in relation to the protraction of the court proceedings indicated in the application were or have been pending before the ECtHR, the ECtHR case number and, if those proceedings were terminated by a decision, the number of the ECtHR decision terminating the proceedings,

(i) an express request for a decision of the court; and

(j) the available evidence and motions to take evidence.

(2) The application shall also be accompanied by the decision terminating the ECtHR proceedings, if such a decision has been given.

Section 13

(1) The time limit for the court's general obligation to take 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 ECtHR in connection with the protraction of the court proceedings indicated in the application and, if necessary, shall contact the Minister representing the State in the proceedings before the ECtHR with a view to obtaining the relevant data.

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

Section 14

(1) If the application is suitable for an examination on the merits, the court shall, when the application is served, invite the defendant to submit a counterstatement within thirty days from the service of the application. Upon the defendant's reasoned request, the court may exceptionally extend the time limit for filing the counterstatement by a maximum of fifteen days.

(2) The counterstatement shall state:

(a) the name of the court conducting the non-contentious proceedings and the court case number,

b) the names, domiciles or registered offices, and the procedural position of the parties,

(c) the name and address of the defendant's legal representative,

(d) the grounds for terminating the proceedings and the underlying legal provisions, if the defendant wishes to use that defence,

(e) the contested part of the application,

(f) the facts supporting the applicant's procedural act or failure to perform the necessary procedural act which, in the defendant's view, justify the disregard of a given period of the court proceedings or of the procedural phase,

(g) the period to be disregarded in view of the procedural act or omission mentioned in point (f),

(h) the duration of the court proceedings or of the procedural phase which may be taken into consideration under this Act; and

(i) the available evidence and motions to take evidence.

Section 15

- (1) In the non-contentious proceedings, the court may, upon a motion or *ex officio*, invite the applicant and the defendant to make further statements or to attach further documents, if it is necessary for the decision.
- (2) The court shall adopt a decision on the merits terminating the proceedings within three months from the receipt of the counterstatement.
- (3) A duration not facilitating the progress of the proceedings, having arisen on the part of the applicant for reasons that could have been avoided, having elapsed needlessly, shall not be included in the duration of the court proceedings or of the procedural phase.
- (4) A duration not facilitating the progress of the proceedings, having arisen on the part of the court for reasons that could have been avoided, having elapsed needlessly, shall not be included in the duration of the court proceedings or of the procedural phase if the applicant failed to file an objection against the protraction of the proceedings despite having had a statutory opportunity to do so.
- (5) The court shall, within the limits of the contents of the application and the counterstatement filed in the non-contentious proceedings, assess the extent to which the procedural act or omission of the applicant, a party to the court proceedings, and the court conducting or having conducted the court proceedings contributed to the exceeding of the period regarded as reasonable. The court shall determine the duration of the judicial proceedings or of the procedural phase that may be taken into consideration after evaluating these circumstances.

Section 16

- (1) In the non-contentious proceedings there shall be no possibility for:
 - a) intervention,
 - b) staying the proceedings upon the parties' agreement,
 - c) ordering an interim measure,
 - d) a hearing; and
 - (e) review.
- (2) In the cases set out in section 121(1) c)–f), the duration of the stay of proceedings shall not exceed one month.

Section 17

- (1) If during the conduct of the non-contentious proceedings the court finds that proceedings instituted by the applicant are pending before the ECtHR in relation to the protraction of a procedural phase of the court proceedings under examination, it shall, save for the exceptions

set out in subsection (2), suspend the non-contentious proceedings until the completion of the proceedings pending before the ECtHR.

(2) The non-contentious proceedings shall not be suspended under subsection (1) if

(a) the application must be rejected; or

(b) in view of the availability of a national remedy, the ECtHR,

(ba) suspends its proceedings or the examination of the applications related to the subject-matter of the case,

(bb) declares the application underlying the proceedings inadmissible as premature, or

(bc) notifies or publishes information in any manner on its position on the need to exhaust a national remedy.

Section 18

(1) An appeal against an order terminating the first instance non-contentious proceedings on the merits shall be determined by the second instance court within forty-five days, whereas appeals against other orders shall be determined within thirty days.

(2) Decisions terminating first instance non-contentious proceedings on the merits shall have the same effect as final judgments.

5. Final provisions

Section 19

The Government shall be empowered to determine in a Decree the size of the pecuniary satisfaction relating to the protraction of civil contentious proceedings, as well as the rules for calculating the amounts payable.

Section 20

This Act shall enter into force on 1 January 2022.

Section 21

(1) This Act shall be applicable to claims for pecuniary satisfaction 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 derogation that a claim for pecuniary satisfaction may only be enforced in respect of court proceedings terminated under a final decision.

(3) A party whose application filed to the ECtHR on account of the protraction of the court proceedings has been registered but not yet decided by the ECtHR 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 enforce a claim for pecuniary satisfaction on account of the protraction of civil contentious court proceedings under this Act, unless at the time of the submission of his application to the ECtHR 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, promulgated by Act No. XXXI of 1993, had already expired.

Section 22

Section 62(1)(m) of Act No. XCIII of 1990 on Duties shall be replaced by the following:

(Save for uniformity complaint proceedings, a party, including the intervener and the interested party, shall be exempt from advancing the duties:)

"(m) in non-contentious court proceedings instituted for enforcing a claim for pecuniary satisfaction in relation to the protraction of civil contentious proceedings;"

2.) The Act will enter into force on 1 January 2022. The next Hungarian parliamentary elections will be held in April of 2022. The new Government will study the practical experiences of the implementation of the Act. The proposal for a remedy covering other types of judicial proceedings can be prepared by the Government by 30 June 2023 on the basis of these experiences.

3.) At the same time I enclosed send you the statistics concerning

- the evolution of the number of first instance proceedings between 31.12.2011. and 28.02.2021. which are pending more than two years (Appendix I.) , and
- the statistics of pending proceedings between 2012 and 2020 (Appendix II.).

15 October 2015



Zoltán Tallódi

Agent of the Government of Hungary

Appendix I.

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The evolution of the number of first instance proceedings between 31.12.2011. and 28.02.2021. pending more than two years

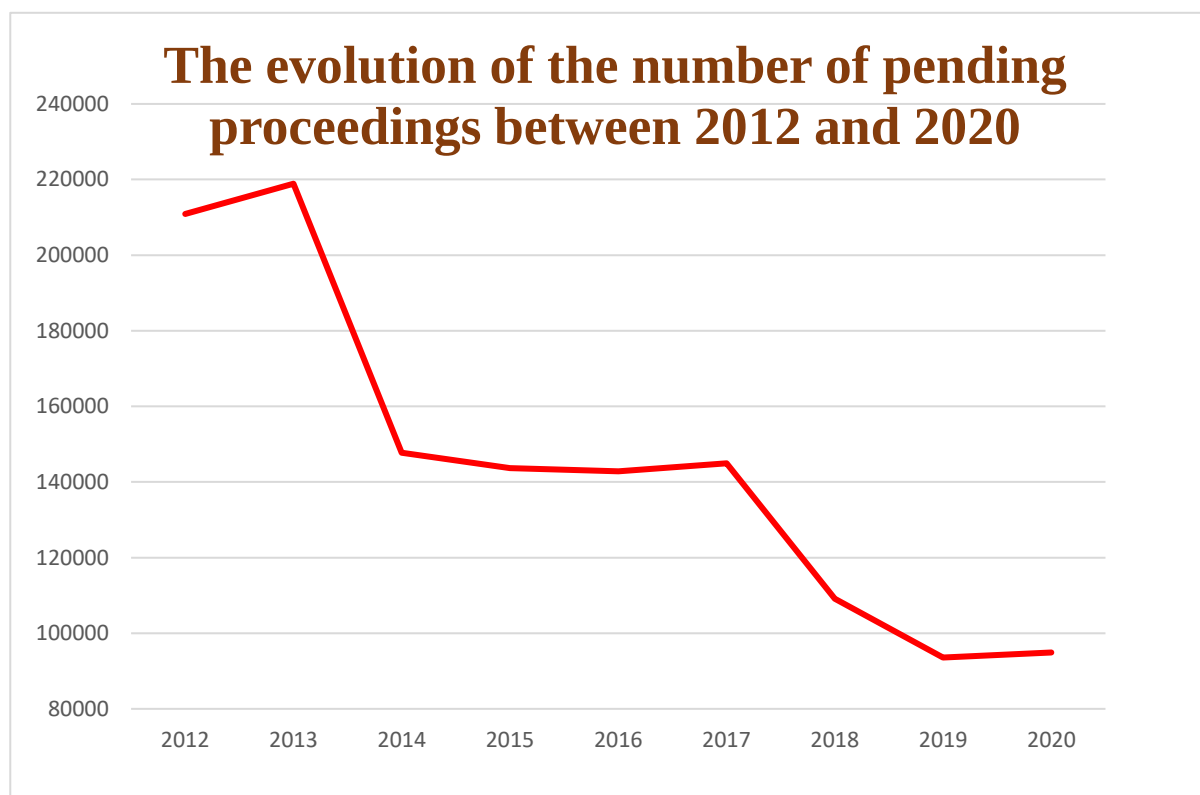
Date	The number of first instance proceedings pending more than 2 years
2011.12.31	12.409
2012.12.31	12.567
2013.12.31	11.690
2014.12.31	10.370
2015.12.31	9.183
2016.12.31	8.124
2017.12.31	7.921
2018.12.31	7.543
2019.12.31	7.103
2020.12.31	5.816
2021.02.28	5.355

THE EVOLUTION OF THE NUMBER OF FIRST INSTANCE PROCEEDINGS BETWEEN 2011 AND 28 FEBRUARY 2021 PENDING MORE THAN 2 YEARS



Appendix II.

Amount of all proceedings in the past years									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
The number of proceedings pending at the end of each period	210 898	218 894	147 733	143 655	142 783	144 950	109 096	93 573	94 909



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