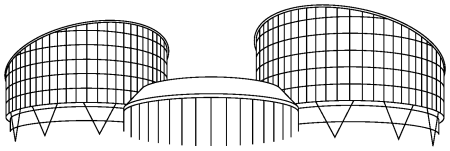

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SOMORJAI v. HUNGARY

(Application no. 60934/13)

JUDGMENT

STRASBOURG

28 August 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Somorjai v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President,*
András Sajó,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 January and 21 November 2017 and 12 June 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 60934/13) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Gábor Somorjai ("the applicant"), on 23 September 2013.

2. The applicant was represented by Mr A. Cech, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant alleged that, in unreasonably protracted litigation concerning his pension rights, the domestic authorities had not taken due account of European Union ("EU") law.

4. On 26 November 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Vác.

6. He was awarded a disability pension on 6 May 1995. Since he had accrued service periods in both Hungary and Austria, his pension was established accordingly, both under the Act no. LXXXI of 1997 on Social

Security Pension Benefits ("the 1997 Pensions Act") and the Social Security Agreement between Hungary and Austria. On 1 May 2004 (the date of Hungary's accession to the EU) his monthly pension was 74,361 Hungarian forints (HUF) (approximately 250 euros (EUR)).

7. On 18 April 2006 he requested a review of his pension rights in accordance with Article 94(5) of Regulation 1408/71/EEC of the Council of the European Communities on the Application of Social Security Schemes to Employed Persons and their Families Moving within the Community (hereinafter "the Regulation"). The provision stipulated that the rights of a person to whom a pension had been awarded prior to the entry into force of the Regulation could, at the request of the person concerned, be reviewed, taking into account the provisions of the Regulation. With regard to the applicant, the date of "entry into force" was Hungary's EU accession.

8. On 1 September 2006 the applicant's monthly pension was reviewed by the Budapest and Pest County Pensions Board (*Fővárosi és Pest Megyei Nyugdíjbiztosítási Igazgatóság*), acting as a first-instance pension authority. The applicant's pension was increased to HUF 134,566 (approximately EUR 449) per month with effect from 1 May 2004.

9. On 7 September 2006 the applicant appealed against that decision, because the pension authority had calculated an overlap period (during which he had worked in Austria but had also had to pay social security contributions in Hungary) as a mere Hungarian service period with a very low average salary.

10. Despite the appeal, the decision was implemented with immediate effect and the applicant received HUF 1,996,104 (approximately EUR 6,650) in arrears.

11. On 16 January 2007 the Central Hungary Regional Pensions Board (*Közép-Magyarországi Regionális Nyugdíjbiztosítási Igazgatóság*), acting as a second-instance pension authority, increased the applicant's monthly pension to HUF 135,450 (approximately EUR 452) with effect from 1 May 2004. For the period 1 May 2004 to 28 February 2007 he received a total of HUF 42,065 (approximately EUR 140) in arrears and interest.

12. The applicant challenged the final administrative decision in court and requested that a question concerning the correct interpretation of the Regulation be referred to the Court of Justice of the European Union ("CJEU") for a preliminary ruling.

13. On 12 October 2007 the Budapest Labour Court dismissed the applicant's action and upheld the pension authority's decision.

14. The applicant lodged a petition with the Supreme Court for review of the Budapest Labour Court's judgment. On 6 March 2009, in the review proceedings, he submitted written pleadings to the Supreme Court.

The pleadings were not submitted to the Court in the present proceedings and the parties' submissions differed as to the content of the document containing them. According to the Government, the applicant withdrew his

request for a preliminary ruling on that date, whereas the applicant alleged that he had only submitted that the reference to the CJEU was not necessarily inevitable, provided that his interpretation of EU case-law was followed. However, in his view, this did not amount to a withdrawal of the request for a reference for a preliminary ruling.

15. On 3 June 2009 the Supreme Court reversed the Budapest Labour Court's judgment and ordered new proceedings, insisting that the EU law principle concerning the prevention of overlapping of benefits be taken into account.

In response to the applicant's request for a reference for a preliminary ruling, the Supreme Court held that the procedure appeared to be unnecessary "because the conditions had not been fulfilled".

16. In the case remitted to it, the Labour Court quashed the decision of the pension authority and instructed it to recalculate the applicant's pension in accordance with EU rules (without counting the overlap period as a mere Hungarian service period). The judgment became final on 19 March 2010.

17. On 7 July 2010 the Central Hungary Regional Pensions Board adopted a new decision in accordance with the instructions of the Budapest Labour Court and increased the applicant's monthly pension to HUF 139,545 (approximately EUR 465) with effect from 1 May 2004. The decision ordered the payment, in arrears, of the difference between the pension due and the amount already paid.

The 1997 Pensions Act provides that if a pension authority has made a mistake to the detriment of an applicant, the difference is to be paid for only the last five years preceding the date the mistake was discovered (the duration of the statutory limitation period). Payment of the difference was therefore ordered for the period after 19 March 2005 only (namely from the date exactly five years before the date on which the Labour Court's judgment became final, see paragraph 16 above). The amount paid to the applicant in arrears and interest was HUF 581,515 (approximately EUR 1,940).

18. On 23 July 2010 the applicant appealed against the decision, claiming the arrears for the whole period following Hungary's EU accession.

19. On 11 November 2010 the Pension Appeals Board (*Nyugdíjbiztosítási Jogorvoslati Igazgatóság*) amended the decision of 7 July 2010 (see paragraph 17 above), reduced the applicant's monthly pension to HUF 138,170 (approximately EUR 460) with effect from 1 May 2004, but limited payment to the period following 19 March 2005.

20. The Appeals Department of the National Pensions Administration (*Országos Nyugdíjbiztosítási Főigazgatóság Jogorvoslati Főosztály*) conducted a repeated second-instance review and, in a decision dated 5 November 2011, amended the decision of 11 November 2010 (see paragraph 19 above). It increased the applicant's monthly pension to

HUF 139,605 (approximately EUR 465) with effect from 1 May 2004, retaining however the limitation of payment as regards the period preceding 19 March 2005.

21. The applicant requested a court review of the pension authority's decision of 7 July 2010, as amended by the decisions of 11 November 2010 and 5 November 2011. He relied on Article 94(6) of the Regulation.

22. On 29 February 2012 the Budapest Labour Court upheld the pension authority's decisions (see paragraphs 17, 19 and 20 above).

23. On 22 March 2012 the applicant submitted a petition for review of the Budapest Labour Court's judgment. He argued that domestic law was to be interpreted and applied in conformity with EU law, of which the relevant provision, Article 94(6) of the Regulation, was directly applicable and had direct effect in the case. He contended, in essence, that he had a right, as acknowledged in the decisions of the pension authority, to an adjusted pension for the whole period following 1 May 2004. The national rule restricting the very payment of that pension to a shorter period of time constituted a "limitation of rights" prohibited by the Regulation. He was of the opinion that the Budapest Labour Court's judgment, in giving precedence to the rule of national law over the relevant provision of the Regulation, had violated the principles of primacy and effectiveness of EU law.

In his petition for review, the applicant did not request that the case be referred to the CJEU for a preliminary ruling; instead, he requested what he considered to be a correct application of Article 94(6) of the Regulation. Nevertheless, he argued that the Budapest Labour Court's judgment had violated Article 234 of the Treaty Establishing the European Community ("EC Treaty", now Article 267 of the Treaty on the Functioning of the European Union ("TFEU")), without providing a detailed explanation on this point.

24. On 26 June 2013 the *Kúria* upheld the judgment of the Budapest Labour Court.

Both the Budapest Labour Court and the *Kúria* reasoned that the Regulation concerned only the acquisition of rights but not the actual payment of allowances. In the courts' view, the applicant had indeed acquired a right to an amended pension from 1 May 2004 and his rights in this regard were not subject to any forfeiture or limitation; it was only the actual payment of the increased amount which had been limited. In the courts' opinion, therefore, the relevant provisions of the 1997 Pensions Act and those of the Regulation did not conflict.

As regards the applicant's argument concerning the alleged violation of Article 234 of the EC Treaty, the *Kúria*'s judgment did not contain any reasoning.

25. In parallel to the litigation described above, on 2 February 2008 the applicant lodged a petition with the Constitutional Court, arguing that the

rules of the 1997 Pensions Act were in conflict with EU law. On 4 October 2010 the court rejected the petition, stating that it lacked competence to examine an alleged conflict between Hungarian and EU law (see decision no. 126/E/2008 of the Constitutional Court).

II. RELEVANT DOMESTIC AND EUROPEAN UNION LAW

A. Domestic law and practice

26. The relevant part of Article XXVIII of the Fundamental Law of Hungary provides:

> "(1) Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.
>
> ..."

27. Section 80(1) of the 1997 Pensions Act provides as follows:

> "If, following the examination of a pension request, it turns out that the pension authority violated the applicable law and ... the pension established or disbursed was therefore unduly low, then the arrears and ... interest shall be paid for the five-year period preceding the establishment of the violation."

28. The relevant provisions of the Code of Civil Procedure (Act no. III of 1952), as in force at the material time, provided as follows:

Article 155/A

> "(1) The court may request the [CJEU] for a preliminary ruling in accordance with the rules laid down in the Treaty establishing the European Community.
>
> (2) The court shall make a reference for a preliminary ruling by order (*végzés*) and shall [simultaneously] stay the proceedings. In the order, the court shall specify the question for which a preliminary ruling is requested and describe the circumstances of the case and the relevant domestic law inasmuch as it is necessary for answering the question referred to the [CJEU]. The order shall be notified to the [CJEU] and, for information, to the Minister in charge of justice at the same time.
>
> (3) No appeal lies against a court decision making a reference for a preliminary ruling or dismissing a request for a reference for a preliminary ruling."

Article 272

> "(2) The petition for review shall specify the decision that is the subject thereof and the substance of the decision requested; furthermore, it shall set out the alleged infringement, specify the legal provision that has been breached and explain the reasons why the impugned decision requires modification."

Article 275

> "(2) The *Kúria* may review a final decision only within the framework of the petition for review ... unless it decides to dismiss the action of its own motion, or if

the court that rendered the decision had not been properly formed, or if a judge who should have been disqualified by law took part in rendering the decision."

29. In leading case no. BH 2015.7.203 the *Kúria* held as follows:

"A petition for review does not meet the requirements [of the Code of Civil Procedure] if, for the purposes of the specification of the infringement, it contains only a general reference to [certain] Chapters ... of the Code of Civil Procedure. The petition for review cannot be examined on the merits if the party specifies the infringed legal provision but does not provide any reasoning in that connection."

30. In leading case no. BH 2016.12.342 the *Kúria* held, in so far as relevant:

"A petition for review may only be examined on the merits if[, in addition to a pure reference to the allegedly violated legal provision,] the petitioning party also describes the substance of the infringement, explains his or her legal opinion thereon and sets out the reasons supporting his or her argument."

31. In leading case no. BH 1995.2.99 the *Kúria* held, in so far as relevant:

"The petition for review must specify the alleged infringement concretely; it is not sufficient to refer to previous submissions.

...

[The petitioning party] did not set out the reasons on which he relied in challenging the final judgment; he only referred to the content of his appeal [against the first-instance judgment]. However, the petition for review is an independent, extraordinary remedy[. Given] its special nature, references to previous submissions are not accepted."

32. Section 46(1) of the Constitutional Court Act (Act no. CLI of 2011) provides as follows:

"If the Constitutional Court, in proceedings conducted by it in the exercise of its competences, declares an omission on the part of the legislature that results in a violation of the Fundamental Law, it shall call upon the organ responsible for the omission to take action and set a time-limit for that."

33. The relevant parts of the Constitutional Court's decision no. 7/2013 (III.1) AB of 1 March 2013 read as follows:

"[26] The Fundamental Law of Hungary, having entered into force in January 2012, imposes on the Constitutional Court the ... task of reviewing the conformity of judicial decisions with the Fundamental Law. In accordance with Article 24 (2) (d) of the Fundamental Law and section 27 of the Constitutional Court Act, the Constitutional Court bears ultimate responsibility for ensuring judicial decisions' conformity with the Fundamental Law. In determining whether a judicial decision is or is not in conformity with the Fundamental Law, the Constitutional Court actually acts in order to redress a violation of a right enshrined under the Fundamental Law, hence it acts in protection of the Fundamental Law ...

...

[30] In its decision no. 61/2011 (VII.13) AB the Constitutional Court took the principled stance that "in the case of certain fundamental rights, the Constitution

specifies the substance of a fundamental right in the same way as international instruments (for example the Covenant on Civil and Political Rights or the European Convention on Human Rights) do. In such cases, the level of protection to be afforded by the Constitutional Court to the fundamental right should in no way be lower than the level of international protection afforded to the given right (typically by the European Court of Human Rights in Strasbourg)" ... Based on this consideration, the Constitutional Court has reviewed the case-law of the [European] Court [of Human Rights] on the right to a reasoned court decision, which it also finds applicable in interpreting the right enshrined in Article XXVIII (1) of the Fundamental Law.

...

[33] 3. The right to a reasoned court decision ... arises in the context of the constitutional requirement of a fair trial, specified in Article XXVIII (1) of the Fundamental Law. ... The Constitutional Court is to examine whether the procedural laws prescribing the duty of giving reasons were or were not applied in conformity with the requirements set forth in Article XXVIII (1) of the Fundamental Law ...

[34] ...The constitutional requirement of giving reasons, being examined by the Constitutional Court, is inherent in Article XXVIII (1) of the Fundamental Law and determines the limits of the courts' margin of appreciation, notably by requiring courts to give reasons for their decisions, in conformity with the procedural laws. The constitutional violation of the duty to give reasons means the application of this procedural rule is not in conformity with the Fundamental Law ... The constitutional requirement of a fair trial demands, as a minimum, that the courts should, with due care, examine the parties' observations made on the relevant parts of the case and should include an assessment of those observations in their decisions ...

...

[40] In the light of the above considerations, the Constitutional Court finds, on the merits, that the high court ... examined the questions ... concerning the relevant circumstances of the case and gave appropriate reasons as regards its conclusions.

[41] The Constitutional Court therefore dismisses this part of the constitutional complaint."

34. In a complaint adjudicated by the Constitutional Court on 19 May 2014 (decision no. 3165/2014 (V. 23) AB), the complainant argued that the *Kúria* had failed to comply with its obligation to refer a question on the interpretation of EU law to the CJEU for a preliminary ruling and to provide adequate reasons for its decision not to do so (see paragraph 5 of the decision).

The Constitutional Court held that the competence to decide whether a reference for a preliminary ruling was necessary in the circumstances was vested solely in the judge hearing the particular case and the Constitutional Court lacked jurisdiction to overrule such decisions. It rejected the complaint as inadmissible and did not address the issue of adequate reasoning.

35. On 14 July 2015 (decision no. 26/2015 (VII. 21) AB) the Constitutional Court examined a complaint regarding a final judgment of the Budapest High Court concerning its failure to refer a question to the

CJEU for a preliminary ruling and to provide reasons for its decision not to do so.

Following an analysis of the CJEU's relevant case-law, the Constitutional Court found that, in the case at issue, the question proposed by the claimant related to the qualification and interpretation of domestic law (which, in the claimant's view, contradicted EU law), rather than to the interpretation of the applicable EU law provision itself. In these circumstances, the Constitutional Court shared the Budapest High Court's opinion that there had been no need for a reference for a preliminary ruling.

It observed that, in accordance with the Code of Civil Procedure as in force at the relevant time, the courts were not required to give reasons for not making a reference to the CJEU. It held that such a situation – that is to say, if the courts did not adopt a formal decision complete with reasons when they refused to refer a question to the CJEU for a preliminary ruling – violated parties' rights to a fair trial. Accordingly, it declared that there had been an omission on the part of the legislature resulting in a violation of the Fundamental Law (see paragraph 32 above), and invited Parliament to amend the relevant legislation by 31 December 2015.

However, the Constitutional Court's decision did not find the Budapest High Court's particular judgment unconstitutional on account of the court's failure to provide reasons for the non-referral – indeed, it did not contain any arguments related to the lack of reasons in that particular judgment.

36. In accordance with the Constitutional Court's decision no. 26/2015, Article 155/A (2) of the Code of Civil Procedure (see paragraph 28 above) was amended as of 4 December 2015 with the following additional wording:

> "If the court dismisses a request for a reference for a preliminary ruling, it shall formulate its decision in the form of an order (*végzés*). The court is obliged to give reasons for that decision, by the latest in its decision on the merits that concludes the proceedings."

37. In decision no. 3082/2016 (IV. 18) AB adopted on 12 April 2016 the Constitutional Court noted *obiter dictum*, in connection with a particular case, that the court hearing the case at issue had observed its obligation to provide reasons for not making a reference to the CJEU.

B. European Union law and practice

38. The relevant part of Article 267 of the TFEU[1] provides:

> "The [CJEU] shall have jurisdiction to give preliminary rulings concerning:
>
> (a) the interpretation of the Treaties;

[1] Formerly, Article 177 of the Treaty establishing the European Economic Community ("EEC Treaty") and then Article 234 of the EC Treaty.

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. ...”

39. In applying that provision, the CJEU has held that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of interpretation of EU law (rather than a question relating to the validity of a Community act, see the judgment in *Gaston Schul Douane-expediteur BV v. Minister van Landbouw, Natuur en Voedselkwaliteit*, C-461/03, judgment of 6 December 2005, ECR I-10513, § 19) is raised before it, to comply with its obligation to bring the matter before the CJEU, unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the CJEU (*acte éclairé*) or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (*acte clair*). The CJEU has also held that the existence of such a possibility must be assessed in the light of the specific characteristics of EU law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the EU (see *Srl Cilfit and Lanificio di Gavardo SpA v. Ministry of Health*, 283/81, judgment of 6 October 1982, ECR 3415, § 21, and *X v. Inspecteur van Rijksbelastingdienst and T.A. van Dijk v. Staatssecretaris van Financiën*, joined cases C-72/14 and C-197/14, judgment of 9 September 2015, § 55). With that proviso, the CJEU also held that it was for the national courts against whose decisions there was no judicial remedy under national law, to take responsibility upon themselves independently for determining whether the case before them involves an *acte clair* (see *X and van Dijk*, cited above, § 59).

40. As regards the specific characteristics of EU law, the CJEU emphasised, among other aspects, that EU law used terminology which was unique to it and that the legal concepts did not necessarily have the same meaning in EU law as in the law of the various member States. It also stressed that every provision of EU law must be placed into context and interpreted in the light of the provisions of EU law as a whole, having regard to the objectives thereof and to its state of evolution at the date on which the provision in question was to be applied (see *Cilfit*, cited above, §§ 19 and 20).

41. The CJEU also defined the meaning of the expression “where any such question is raised” contained in the third paragraph of Article 267 of the TFEU (see *Cilfit*, cited above, §§ 8-9). It later summarised its settled case-law on this point as follows (see *Belgische Petroleum Unie VZW*

and Others v. Belgische Staat, C-26/11, judgment of 31 January 2013, §§ 23-24):

> "23. ... [I]t should be borne in mind that the fact that the parties to the main action did not raise a point of European Union law before the referring court does not preclude the latter from bringing the matter before the [CJEU]. In providing that a request for a preliminary ruling may be submitted to the [CJEU] where 'a question is raised before any court or tribunal of a member state', the second and third paragraphs of Article 267 TFEU are not intended to restrict this procedure exclusively to cases where one or other of the parties to the main action has taken the initiative of raising a point concerning the interpretation or the validity of European Union law, but also extend to cases where a question of this kind is raised by the court or tribunal itself, which considers that a decision thereon by the [CJEU] is 'necessary to enable it to give judgment' ...
>
> 24. Moreover, according to settled case-law, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court."

The CJEU further held, in the case of *Lucio Cesare Aquino v. Belgische Staat* (C-3/16, judgment of 15 March 2017, § 43), that:

> "[i]t follows from the relationship between the second and third paragraphs of Article 267 TFEU that the courts referred to in the third paragraph have the same discretion as all other national courts as to whether a decision on a question of EU law is necessary to enable them to give judgment."

42. Article 94(6) of the Regulation 1408/71/EEC of the Council of the European Communities on the Application of Social Security Schemes to Employed Persons and their Families Moving within the Community, as in force until 1 May 2010, provided as follows:

> "If an application referred to in paragraph 4 or 5 [in particular, an application for the review of a pension awarded prior to the entry into force of this Regulation] is submitted within two years from the date of entry into force of this Regulation, the rights acquired under this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned."

It appears that the interpretation of that provision has so far not been the subject of a preliminary ruling of the CJEU.[1]

[1] See https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31971R1408, accessed on 12 June 2018

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

43. The applicant complained of a violation of his right to a fair trial. He argued that the domestic authorities and, in particular, the *Kúria* had not taken due account of the EU law provision which should have governed his case and which placed certain obligations on the national courts in respect of references for preliminary rulings, including an obligation incumbent on national courts of last instance to provide reasons for not making a reference.

He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. The parties' submissions

1. The Government

44. The Government raised an objection of non-exhaustion of domestic remedies. They argued that the applicant could have challenged the *Kúria*'s judgment before the Constitutional Court under Article XXVIII of the Fundamental Law of Hungary, which guaranteed the right to a fair trial. They referred to decision no. 7/2013 (see paragraph 33 above) in which the Constitutional Court examined, in the light of both Article XXVIII of the Fundamental Law and Article 6 of the Convention, the fairness of a high court's final judgment, with particular regard to the question of whether the high court had observed its obligation to give appropriate reasons for its decision. In the Government's view, the Constitutional Court's decision demonstrated that the applicant could have brought his complaint relating to the unfairness of the proceedings and, in particular, the lack of appropriate reasoning, before the Constitutional Court – a legal avenue of which he had not availed himself.

45. As regards the merits of the complaint, the Government argued that both the Budapest Labour Court and the *Kúria* had considered the issue of compatibility of the relevant Hungarian rules with the provisions of the Regulation and had given reasons why the EU law provision relied on by the applicant had not been relevant in the case and why there had not been a conflict between domestic and EU law.

46. They further contended that on 6 March 2009 the applicant had withdrawn his request for a reference for a preliminary ruling (see

paragraph 14 above). It had therefore been unnecessary for the courts to provide reasons as to why no such reference had been made to the CJEU.

2. The applicant

47. As regards the Government's objection concerning non-exhaustion of domestic remedies, the applicant submitted that a constitutional complaint was not an effective remedy within the meaning of the Court's case-law. He argued that, although the Constitutional Court would become aware of a constitutional complaint following a request lodged directly by the person concerned, the formal institution of proceedings depended on the discretion of that court, which only accepted such a complaint if it raised an issue that was of "fundamental importance" or that "significantly affected" the challenged judicial decision. For the applicant, it followed from the vagueness of these notions that the legal avenue of a constitutional complaint lacked a sufficient degree of certainty. Furthermore, he objected that the Government had failed to cite any case-law in which the Constitutional Court had analysed an omission of a reference for a preliminary ruling to the CJEU.

48. As to the merits of the complaint, the applicant submitted that the supreme domestic judicial instances had failed to consider the CJEU's case-law on which he had extensively relied in order to clarify the correct interpretation of the Regulation. Nor had they provided sufficient reasoning, in line with the *Cilfit* requirements (see paragraph 39 above), as to why it was so obvious, leaving no scope for any reasonable doubt, that the non-payment of his pension with respect to a certain period had not amounted to a "forfeiture or limitation" prohibited by the Regulation. He also contended that he had not withdrawn his request for a reference for a preliminary ruling in 2009; he had only argued before the Supreme Court that, in the event it shared his opinion concerning the correct application of the Regulation, a reference would no longer be necessary (see paragraph 14 above). He submitted that, in any event, a national court or tribunal could refer a matter to the CJEU of its own motion – it was therefore not a party's request but the substantial need for the CJEU's interpretation that triggered the duty incumbent on a court of last instance to make a reference for a preliminary ruling. The applicant was of the view that such a need for interpretation had been present in his case; it had hence been the *Kúria*'s duty to refer a question to the CJEU or give ample reasons, in the light of the *Cilfit* criteria, why this had not been necessary in the particular circumstances.

B. The Court's assessment

49. The Court does not consider it necessary to examine the Government's objection of non-exhaustion of domestic remedies (see

paragraph 44 above), given that this part of the application is in any event inadmissible for the following reasons.

50. The Court notes that the applicant's complaint challenged two aspects of the fairness of the domestic proceedings.

51. Firstly, that the domestic authorities applied section 80(1) of the 1997 Pensions Act in his case, allegedly in blatant disregard of a mandatory provision of EU law, namely Article 94(6) of the Regulation (see paragraph 42 above), which was directly applicable and should have had direct effect in the case.

52. Secondly, that the Supreme Court, renamed the *Kúria* (see the first sentence of point 36 of the Constitutional Court's decision cited in *Baka v. Hungary* [GC], no. 20261/12, § 55, ECHR 2016), as a court of last instance, failed to provide reasons in accordance with the *Cilfit* criteria as to why it had deemed it unnecessary to refer a question concerning the Regulation's interpretation to the CJEU for a preliminary ruling.

53. The Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is not competent to rule formally on compliance with domestic law, other international treaties or EU law. The task of interpreting and applying the provisions of EU law falls firstly to the CJEU, in the context of a request for a preliminary ruling, and secondly to the domestic courts in their capacity as courts of the Union, that is to say, when they give effect to a provision of EU law as interpreted by the CJEU (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 100, ECHR 2016). It is therefore primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law, the Court's role being confined to ascertaining whether the effects of such adjudication are compatible with the Convention (see *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, § 54, 20 September 2011). Furthermore, the Court should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

1. Complaint alleging a misinterpretation of EU law

54. In so far as the complaint challenged the *Kúria*'s interpretation of EU law, concerning notably the meaning of Article 94(6) of the Regulation and leading to the application of section 80 of the 1997 Pensions Act, the Court considers that the review of the soundness of that interpretation, adopted by the *Kúria* in its capacity as a court of the Union, is an area that falls outside the Court's jurisdiction (see *Ullens de Schooten and Rezabek*, cited above, § 66).

55. It follows that the first part of the complaint (see paragraph 51 above) is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Complaint of a lack of reasoning in connection with the need for a reference for a preliminary ruling

56. As regards the second aspect of the complaint, concerning the adequacy, within the meaning of Article 6 § 1 of the Convention, of the *Kúria*'s reasoning with respect to a potential reference for a preliminary ruling (see paragraph 52 above), the Court reiterates that the Convention does not guarantee, as such, any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling. However, the Court does not rule out the possibility that, where a preliminary reference mechanism exists, refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings – in particular, where the refusal proves arbitrary, that is to say where there has been a refusal even though the applicable rules allow no exception to the principle of preliminary reference or no alternative thereto, where the refusal is based on reasons other than those provided for by the rules, and where the refusal has not been duly reasoned in accordance with those rules (see *Ullens de Schooten and Rezabek*, cited above, §§ 57-59).

57. The general principles relating to the obligation of reasoning on the national courts against whose decisions there is no remedy under national law and which decide not to refer a question on the interpretation of EU law that has been raised before them to the CJEU for a preliminary ruling, have been set out in the case of *Ullens de Schooten and Rezabek* (cited above, §§ 56 to 62; see also, *mutatis mutandis*, *Vergauwen and Others v. Belgium* (dec.), no. 4832/04, §§ 89 and 90, 10 April 2012; *Dhahbi v. Italy*, no. 17120/09, § 31, 8 April 2014; *Wind Telecomunicazioni S.P.A. v. Italy* (dec.), no. 5159/14, § 34, 8 September 2015; and *Avotiņš,* cited above, § 110).

The gist of those principles is that the above-mentioned courts are obliged, in accordance with the *Cilfit* case-law (see paragraphs 39 to 41 above), to state the reasons why they have considered it unnecessary to seek a preliminary ruling; in particular, why they have found that the question is irrelevant, that the EU law provision in question has already been interpreted by the CJEU, or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt. Whilst the verification of the presence of such reasoning has to be made thoroughly, it is not for the Court to examine any errors that may have been committed by the domestic courts in interpreting or applying the relevant law.

58. Turning to the facts of the present case, the Court notes at the outset that the applicant's case was heard twice by the supreme domestic judicial instance; first in 2009, then in 2013 (see paragraphs 15 and 24 above). In 2009 the alleged conflict between section 80(1) of the 1997 Pensions Act and Article 94(6) of the Regulation, in respect of which the applicant argued before the Court that a reference for a preliminary ruling would have been necessary, was not yet the subject matter of the litigation. That issue was not raised until after the decision of 7 July 2010 of the Central Hungary Regional Pensions Board, which limited the actual payment of the applicant's pension (see paragraph 17 above). The Government argued that, although the applicant had initially requested that a reference for a preliminary ruling be addressed to the CJEU, by that time he had already withdrawn that request (see paragraph 46 above). The applicant contested this argument and submitted that he had maintained his request for a preliminary ruling throughout the proceedings in case the courts did not share his opinion concerning the correct application of the Regulation (see paragraphs 23 and 48 above).

59. The Court considers that it is not necessary to resolve the difference between the parties' assertions, because in any event the applicant was required, as per the relevant domestic legislation and case-law (see paragraphs 28 to 31 above) to formulate his petition for review in a self-contained and comprehensive manner, that is to say, to specify the alleged infringement concretely and to set out all of his petitions complete with reasoning, without reference to any previous submissions. The *Kúria*'s jurisdiction was limited to an examination of the issues raised by the petition for review.

60. The Court notes that the applicant did not request, in his petition for review, that the case be referred to the CJEU for a preliminary ruling; nor did he provide any reasons as to why, in his view, the Budapest Labour Court's judgment had violated Article 234 of the EC Treaty (see paragraph 23 above). Under these circumstances, the lack of reasoning in connection with these aspects seems to be in line with the domestic procedural rules.

61. The Court further notes that, as per the CJEU's relevant case-law (see paragraph 41 above), even if the initiative of a party is not necessary for a domestic court against whose decisions there is no judicial remedy under national law to be obliged to bring a question concerning the interpretation or the validity of EU law before the CJEU, it is solely for that court to determine in the light of the particular circumstances of the case the need for a preliminary ruling in order to enable it to deliver judgment. The Court observes that in the present case the *Kúria* was of the view that the relevant provisions of the 1997 Pensions Act and those of the Regulation did not conflict; it did not consider a preliminary ruling on a question of EU law necessary to give judgment (see paragraph 24 above).

62. In such circumstances the Court does not discern any appearance of arbitrariness in the fact that the *Kúria* did not refer a question to the CJEU for a preliminary ruling or in its manner of giving reasons for the judgment without elaborating on questions related to a potential reference for a preliminary ruling (see also, *mutatis mutandis*, *Ryon and Others v. France* (dec.), nos. 33014/08, 36748/08, 5187/09, 11793/09, 43329/10 and 66405/10, § 32, 15 October 2013).

63. It follows that the second part of the complaint (see paragraph 52 above) is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

64. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

65. The Government contested this view.

66. The period to be taken into consideration began on 7 September 2006, when the applicant lodged his appeal against the decision of the first-instance pension authority concerning his request for a review of his pension rights (see paragraph 9 above); it was then that a "dispute" within the meaning of Article 6 § 1 arose (see, *mutatis mutandis*, *König v. Germany*, 28 June 1978, § 98, Series A no. 27; *Tóth, Magyar and Tóthné v. Hungary*, no. 35701/04, § 19, 6 December 2005; *Počuča v. Croatia*, no. 38550/02, § 30, 29 June 2006; and *Kugler v. Austria*, no. 65631/01, § 36, 14 October 2010). It ended on 26 June 2013, when the *Kúria* upheld the judgment of the Budapest Labour Court (see paragraph 24 above). It thus lasted more than six years and nine months at two levels of administration and two levels of court.

67. At this juncture, the Court notes that it cannot share the Government's argument that the proceedings at issue should be considered to have comprised of two distinct parts, one concerning the amount of the applicant's pension (covering the period between 2006 and 29 February 2012) and the other concerning the applicability of section 80(1) of the 1997 Pensions Act (covering the period between 11 November 2010 and 26 June 2013). For the Court, the actual disbursement of the applicant's adjusted pension constituted a question inherently linked to the subject matter of the dispute started in 2006. It further observes that the issues raised by the application of section 80(1) of the 1997 Pensions Act were examined by the domestic courts as part of one and the same proceedings. Therefore, the separate treatment of those issues for the purposes of Article 6 § 1 of the Convention would be artificial and unjustified.

68. In view of such lengthy proceedings, this complaint must be declared admissible.

69. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

70. The Court notes that the case was not exceptionally complex, and the applicant did not cause any delays. As regards what was at stake for the applicant, the Government argued that the subject of the dispute had been a difference of HUF 60 (approximately EUR 0.20) between what had been awarded by the pension authorities' decisions of 7 July 2010 (see paragraph 17 above) and 5 November 2011 (see paragraph 20 above), respectively. For the Court, the amount to be taken into account is rather the difference between the pension as initially fixed on 1 September 2006 and as eventually established on 5 November 2011, that is, a monthly difference of approximately EUR 16. Leaving aside the interim payments disbursed to the applicant, that difference could have added up to a total of approximately EUR 1,300 during that period. Furthermore, the proceedings also concerned the question whether or not the adjusted pension should be paid for the period between 1 May 2004 and 19 March 2005. In this regard, an amount of more than EUR 2,000 (approximately 10.5 times the monthly difference between the applicant's initial pension of approximately EUR 250 and the eventually established amount of approximately EUR 465) was also arguably at stake.

71. The Court has already held that special diligence is necessary in pension disputes (see, among other authorities, *Pejčić v. Serbia*, no. 34799/07, § 70, 8 October 2013). In such circumstances, having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement (see, *mutatis mutandis*, *Gazsó v. Hungary*, no. 48322/12, § 17, 16 July 2015).

There has accordingly been a breach of Article 6 § 1 of the Convention on account of the length of proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

74. The Government considered this claim excessive.

75. Having regard to its case-law and practice and deciding on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

76. The applicant also claimed EUR 200 for costs and expenses incurred before the domestic courts and EUR 8,610 for those incurred before the Court. The latter sum corresponds to fifty-three hours of legal work, charged at an hourly rate of EUR 150, and twelve hours of paralegal work, charged at an hourly rate of EUR 50, to be billed by his lawyer.

77. The Government considered those claims excessive.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 6 § 1 of the Convention concerning the length of the proceedings admissible;

2. *Declares*, by five votes to two, the complaint under Article 6 § 1 of the Convention concerning the alleged lack of adequate reasoning with respect to a potential reference for a preliminary ruling inadmissible;

3. *Declares*, unanimously, the remainder of the complaint under Article 6 § 1 of the Convention concerning the fairness of the proceedings inadmissible;

4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 August 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Sajó and Pinto de Albuqurque is annexed to this judgment.

V.D.G.
M.T.

JOINT SEPARATE OPINION OF JUDGES SAJÓ AND PINTO DE ALBUQUERQUE

1. We voted with the majority as regards the finding that there has been a violation of Article 6 § 1 of the Convention (length of proceedings). We also agree with the majority that the complaint alleging a misinterpretation of EU law is inadmissible *ratione materiae.* In contrast to the majority, however, we find that the complaint concerning the lack of reasoning in respect of the need for a reference for a preliminary ruling is admissible; further, we conclude that Article 6 was violated.

2. The Court came to the conclusion that "the applicant did not request, in his petition for review, that the case be referred to the CJEU for a preliminary ruling; nor did he provide any reasons as to why, in his view, the Budapest Labour Court's judgment had violated Article 234 of the EC Treaty" (see paragraph 60 of the present judgment). We respectfully disagree.

3. It is true that the applicant did not request in his petition for review, dated 22 March 2012, that the case be referred to the CJEU for a preliminary ruling. Nevertheless, it appears that the question of the interpretation of certain provisions of EU law, in particular Article 94(6) of the Regulation, was effectively raised before the *Kúria* within the meaning of the CJEU's relevant case-law (see paragraph 41 of the present judgment). Moreover, the arguable need to give at least some consideration to the *Cilfit* criteria was also raised through the applicant's argument concerning a violation of Article 234 of the EC Treaty. To disregard these facts is formalistic.

4. The Court was of the view that, according the applicable EU law on matters of preliminary review, it is solely for the domestic court to determine – in the light of the particular circumstances of the case – whether it requires a preliminary ruling to enable it to deliver judgment. This does not exempt a domestic court from its Convention duty to give proper reasons. The *Kúria* did not put forward any reasoning to explain its interpretative stance. In this connection, an element of consideration, although not necessarily a decisive one, is that the *Kúria* did not base its interpretation on any case-law from the CJEU (see, *mutatis mutandis*, *Dhahbi v. Italy*, no. 17120/09, § 33, 8 April 2014, and, conversely, *Société Divagsa v. Spain*, no. 20631/92, Commission decision of 12 May 1993, Decisions and Reports 74, p. 280). Nor does it appear that the *Kúria* assessed the obvious nature of the adopted interpretation in the light of the specific characteristics of EU law, as required by the *Cilfit* case-law (see paragraphs 39 and 40 of the present judgment). Indeed, the Court is unable to identify any argument in the *Kúria*'s judgment as to why it considered the interpretation it had adopted so obvious as to leave no scope for any reasonable doubt, even in the light of the specific characteristics of EU law

(see *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, § 62 *in fine*, 20 September 2011).

5. Such lack of reasoning is all the more apparent when it is considered together with the fact that the *Kúria* completely ignored the applicant's argument concerning an alleged violation of Article 234 of the EC Treaty (see paragraphs 23 and 24 of the present judgment). Although Article 6 does not go so far as to require a detailed answer to every submission put forward, it does require judgments of tribunals adequately to state the reasons on which they are based (see, *mutatis mutandis*, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, §§ 173-174, 11 June 2013, where the Court found even succinct reasons concerning a request for a preliminary ruling sufficient because, in the light of other findings, the reference to the CJEU would have been redundant). In the present case, where the correct interpretation of the relevant EU law was not a redundant question but the crux of the review proceedings before the *Kúria*, the applicant's reference to Article 234 of the EC Treaty would have warranted at least adequate reasoning as to the grounds underpinning the *Kúria*'s judgment, in so far as it appears to contain an implicit application of the *acte clair* doctrine. It is of relevance in this respect that Article 94(6) of the Regulation was never subject to a preliminary ruling of the CJEU. There thus existed no well-established case-law concerning its correct interpretation (see paragraph 42 *in fine* of the present judgment, and contrast *Krikorian v. France* (dec.), no. 6459/07, §§ 23-25, 98 and 99, 26 November 2013).

6. As regards the Government's second objection (non-exhaustion of domestic remedies, namely recourse to the Constitutional Court), the Constitutional Court decision relied on by the Government (decision no. 7/2013, see paragraph 33 of the present judgment) concerned the courts' duty of reasoning under domestic procedural rules, rather than under the relevant EU requirements. The Government have failed to provide any examples of Constitutional Court practice, let alone established case-law, showing that that court had, at the relevant time and in application of the relevant EU-law criteria, dealt with issues related to the domestic courts' failure to provide adequate reasoning for non-referrals to the CJEU.

7. In the light of these arguments, expressed in the context of admissibility, it is obvious that the domestic courts failed to satisfy their duty to provide duly reasoned judgments. In the circumstances of the case this resulted in a violation of Article 6 of the Convention.