THEMIS GRAND FINAL
28-31 October
Paris, France

TEAM HUNGARY

vs.

TEAM PORTUGAL

CASE OF Tr.

The applicant was born in 1939. The applicant brought an action before the District Court on 6 July 2007 arguing that an individual ("the defendant") had unlawfully seized a lorry belonging to her and that he was retaining it without good title. Accordingly, she asked the court to order the defendant to return the vehicle to her.

On 2 March 2009 the defendant filed his observations in reply, explaining in detail the history and legal status of the vehicle.

The District Court heard the case on 10 August, 23 September and 28 October 2009. The applicant's lawyer was present at all of these hearings, as was the applicant herself, except for the first one. In addition, on 26 October 2009, the applicant consulted the court's case file on her own initiative.

At the conclusion of the last-mentioned hearing, the District Court pronounced its judgment dismissing the action. In doing so, it found that the applicant had failed to show that she had lawfully acquired title to the vehicle and concluded that the defendant had lawfully acquired it by way of purchase from the receiver appointed to act in connection with the insolvency of the vehicle's previous owner, a legal entity with which the applicant had been involved.

The applicant lodged an appeal contesting *en bloc* the District Court's assessment of the facts and the interpretation and application of the relevant law.

In response to a specific written request by the District Court dated 21 January 2010, she objected to having her appeal decided without a public hearing.

On 5 February 2010 the defendant filed his observations in reply to the appeal, contesting its procedural, substantive and factual grounds and again querying the legal status and history of the vehicle.

According to a written record and minutes submitted by the Government, on 20 October 2010 a notice was displayed on the official noticeboard of the Regional Court stating that the applicant's appeal would be decided in chambers on 27 October 2010 and the Regional Court's judgment was publicly pronounced on that date.

By that judgment, the Regional Court dismissed the applicant's appeal, endorsing the findings of the first-instance court and finding that, in her appeal, the applicant had not submitted any relevant new information to refute those findings. No hearing of the appeal was held. In the written version of the judgment, no mention is made of the defendant's observations.

On 15 December 2010 the applicant lodged an appeal on points of law. She relied on Article 237 (f) of the Code of Civil Procedure ("the CCP"), under which such an appeal was admissible if the courts had prevented a party to the proceedings from pursuing a case before them.

She also invoked Article 6 § 1 of the Convention and argued, *inter alia*, (i) that the Court of Appeal had ruled on her appeal without having held a public hearing, despite her objection to such a course of action; (ii) that the defendant's observations in reply to her appeal had not been communicated to her; and (iii) that the Court of Appeal had not only failed to summon her to a public pronouncement of its judgment but had, indeed, failed to pronounce that judgment publicly at all.

On 20 April 2011 the Supreme Court declared the applicant's appeal inadmissible without examining the merits of the case. It held no hearing and decided in chambers.

The Supreme Court referred to Article 214 of the CCP under which – as applicable at the relevant time – an appeal could be decided without a hearing unless (i) evidence had to be re-examined or new evidence had to be taken, (ii) the first-instance court had not held a hearing; or (iii) a hearing was called for in view of an issue of significant public interest.

The Supreme Court observed that none of these criteria had arisen, in view of which there had been no need for the Regional Court to hold a hearing of the applicant's appeal.

The Supreme Court further observed that, under the case-law of the Constitutional Court, a failure by a court to communicate to one party a submission made by the other party would normally constitute a violation of the principles of equality of arms and adversarial proceedings. However, there was no such consequence if the court concerned did not base its decision on the non-communicated submission.

The Supreme Court also noted that, although there was no statutory duty to communicate to an appellant observations made in reply to the appeal in question, if the appeal was to be determined without holding a hearing, then the observations normally "should" be communicated to the appellant. The Supreme Court added that, however, such observations "should" be communicated to the appellant only if they had a conclusive influence on the decision of the Court of Appeal. In that regard,

referring to the contents of the case file, the Supreme Court held that the observations made by the defendant in reply to the applicant's appeal had had no impact at all on the Regional Court's decision and concluded that, consequently, the failure to communicate those observations to the applicant was irrelevant in legal terms.

The Supreme Court also referred to Article 156 of the CCP, pursuant to which a judgment must always be pronounced publicly (paragraph 1) and, in matters decided without a hearing, the time and place of the pronouncement must be announced on the official notice board of the given court no less than five days before the pronouncement (paragraph 3). The Supreme Court further referred to the contents of the case file and, in particular, to the minutes concerning the public pronouncement of the contested judgment, on the basis of which it concluded that, in the case at hand, the parties had properly been notified of the public delivery of the judgment, that the judgment had properly been pronounced, and that all of the applicable rules had been complied with.

In sum, the Supreme Court concluded that none of the applicant's arguments constituted any ground for admitting her appeal on points of law for examination on the merits.

On 26 June 2011 the applicant lodged a complaint against the ordinary courts' decisions with the Constitutional Court. She relied, *inter alia*, the Constitution (individual complaint) and Article 6 § 1 of the Convention, advancing essentially the same arguments as in her appeal on points of law.

On 7 July 2011 the Constitutional Court declared the complaint inadmissible. It held no hearing and decided in chambers, citing extensively from the Supreme Court's decision and finding no constitutionally relevant flaw in it.

The Constitutional Court's decision was served on the applicant on 21 September 2011.

ALLEGED VIOLATION **OF ARTICLE 6 OF THE CONVENTION**

The applicant complained that she had not received a fair and public hearing and that the judgment of the Regional Court had not been pronounced publicly as provided in Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal .... Judgment shall be pronounced publicly ..."

Team HUNGARY will present all possible allegations of the applicant before the European Court based on Article 6 of the Convention

Team PORTUGAL will present the position of the Government before the same Court

RELEVANT DOMESTIC PRACTICE

Under the established practice of both the Constitutional Court and the Supreme Court, the observations of one party to the proceedings in response to any legal remedy to which the opposing party has recourse must be communicated to the latter for comment if – and only if – the said observations have a substantial influence on the court's decision concerning the legal remedy in question. Conversely, if the court making the decision about the remedy does not base its decision on the observations filed in response to such a remedy, the lack of communication of such observations to the party pursuing the remedy is not deemed to have prevented that party from pursuing the case before the court. One of the reasons behind this position is that the opposite could in practice mean a recurring and never-ending process of exchanging observations, which would produce effects conflicting with the principle of the rule of law (see judgment of the Constitutional Court of 12 January 2012, and decision of the Supreme Court dated 29 February 2012).