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

SECOND SECTION

CASE OF APEH ÜLDÖZÖTTEINEK SZÖVETSÉGE AND OTHERS v. HUNGARY

(Application no. 32367/96)

JUDGMENT

STRASBOURG

5 October 2000

FINAL

05/01/2001

In the case of APEH Üldözötteinek Szövetsége and Others v. Hungary,

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

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 14 September 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32367/96) against the Republic of Hungary lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an unregistered association, APEH Üldözötteinek Szövetsége, and three Hungarian nationals, Mr Péter Iványi, Mr Miklós Róth and Mr Szabolcs Szerdahelyi ("the applicants"), on 29 April 1996.

2. The applicant association was represented by Mr M. Róth (the third applicant), a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Höltzl, Deputy Secretary of State at the Ministry of Justice.

3. The applicants alleged, in particular, that proceedings concerning the applicant association's registration were unfair, in breach of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 31 August 1999, the Court declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry.].

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. APEH Üldözötteinek Szövetsége (Alliance of APEH's Persecutees) is an unregistered association with its head office in Budapest. APEH is the commonly used abbreviation for the Hungarian Tax Authority (Adó- és Pénzügyi Ellenőrzési Hivatal – "APEH").

Mr Iványi, born in 1950 and residing in Nyíregyháza, Hungary, is a manager and a vice-president of the applicant association. Mr Róth, born in 1943 and residing in Budapest, is a lawyer and a vice-president of the applicant association. Mr Szerdahelyi, born in 1943 and residing in Budapest, is a free-lance writer and the president of the applicant association.

9. In May 1993 several private persons, among others Mr Iványi, Mr Róth and Mr Szerdahelyi, founded the applicant association. Its articles of association, dated 28 May 1993, state that the purpose of the association is, in particular, to promote the general interests of Hungarian taxpayers.

10. On 3 June 1993 the President of APEH, having learnt about the founding of the applicant association from the press, complained to the Budapest public prosecutor and the President of the Budapest Regional Court that the choice of name was defamatory for APEH. He requested that particular attention be paid to the proceedings concerning the association's registration and that his office have access to the documents relating to the proceedings. These letters of the President of APEH reached the addressees on 7 June 1993, but were not communicated to the applicants in the subsequent non-contentious proceedings aiming at the applicant association's registration.

11. On 18 June 1993 Mr Szerdahelyi requested the Budapest Regional Court to register the applicant association.

12. On 28 June 1993 the Regional Court returned the request for registration, ordering that APEH's approval for the use of its name be obtained, that the expression "persecutees" in the applicant association's name be altered to a neutral term and that provisions regulating the method of voting within the applicant association's bodies be added to its articles of association.

APEH obtained a copy of this order from the Regional Court before it was served on the applicants and, in a television programme on 9 August 1993, its spokesman presented it.

13. By a letter dated 2 July 1993 the public prosecutor's office intervened in the registration proceedings under Article 2/A § 1 of Law no. 3 of 1952 on the Code of Civil Procedure ("the Code of Civil Procedure"). The Regional Court received this letter on 8 July 1993. The applicants were not notified of this intervention.

14. Following some delays in the service of the order of 28 June 1993, the applicants submitted their reply to the Regional Court on 17 September 1993. They refused to obtain APEH's approval for the use of its name or to alter the impugned expression. Moreover, they stated that the information on the method of voting by the applicant association's bodies was available from their original submissions requesting the registration.

Simultaneously, the applicants challenged the judge in charge of the case, as well as the entire Regional Court, for bias on the ground that, *inter alia*, they had not been informed about the intervention by the public prosecutor's office in the registration proceedings.

15. On 13 December 1993 the Supreme Court dismissed the applicants' challenge for bias. The Supreme Court found that the Regional Court's procedure had been in compliance with the relevant legal provisions and there was nothing to support the applicants' allegations as to any bias on the part of the Regional Court.

16. On 24 January 1994 the public prosecutor's office proposed to the Regional Court that the applicant association's request for registration be rejected, as the association had not met the requirements in the court order of 28 June 1993. This submission was received by the Regional Court on 25 January and was ordered to be sent to the applicants on 28 January 1994.

17. In their submissions dated 7 January, but filed with the Regional Court only on 8 February 1994, the applicants confirmed that they had meanwhile adopted an amendment to the articles of association, reflecting the Regional Court's requirements as to the voting methods. Moreover, they argued that the requirement that they seek APEH's approval for the use of its name was legally "absurd".

18. On 10 February 1994 the Regional Court rejected the applicant association's request for registration. It observed that the applicants had not obtained APEH's approval for the use of its name. In this respect, the Regional Court relied on section 7(1) of Law no. 2 of 1989 on freedom of association ("the Associations Act 1989"), according to which the name of an association should not give the impression that the association in question carries on its activities in a manner linked to those of another legal person, unless approved by the latter. Moreover, it held that the expression "persecutees" was defamatory for APEH as a State organ and was contrary to the standards of naming an association, as laid down by the Supreme

Court in its Administrative College's Legal Opinion no. 1. Finally, the Regional Court found that the applicant association had only partly met the requirements as to the method of voting by its bodies.

19. The applicants appealed to the Supreme Court. Simultaneously, they complained about the dismissal of their challenge for bias.

20. On 7 July 1994 the Attorney-General's Office intervened in the appeal proceedings and proposed that the Supreme Court uphold the refusal of the request for registration. The applicants did not receive a copy of these submissions.

21. On 2 October 1995 the Supreme Court dismissed the applicant association's appeal. In addition to the reasons given by the Regional Court, it held that the applicant association's name did not correspond to its objectives, namely to reform the Hungarian taxation system, and that it could therefore not be registered under that name. The decision did not deal with the applicants' complaint about the dismissal of their challenge for bias.

The applicants lodged a petition for review by the Supreme Court.

22. On 21 February 1996 the Attorney-General's Office requested that the Supreme Court uphold the second-instance decision.

23. On 14 May 1996 the Supreme Court dismissed the petition for review. The decision was served on the applicants on 20 June 1996.

The review bench of the Supreme Court held that the association's intended name was contrary to Article 77 § 1 of the Civil Code guaranteeing the right to bear a name. It held this provision to imply that a legal person's name should not give the false impression that its activity was linked to that of another legal person, namely, to that of APEH in the instant case. It also found that the unauthorised use of APEH's name contravened Article 77 § 4 of the Civil Code, according to which it was a breach of the right to bear a name if anyone used, without authorisation, a name identical with or similar to another person's name. Moreover, it considered that the expression “persecutees”, used in association with APEH's name, was contrary to Article 78 § 1 of the Civil Code protecting one's good reputation.

Furthermore, the Supreme Court held that any procedural shortcomings committed by the lower courts, in particular those concerning the handling of the submissions of APEH and of the public prosecutor's office, had not influenced the courts' decisions on the merits of the case. It also stated that, throughout the proceedings, the applicants had been in a position to exercise their rights effectively and, in the course of the second-instance and the review proceedings, they could have made any comments which they had not been able to advance previously.

Finally, the Supreme Court pointed out that the applicants' complaint about the dismissal of their challenge for bias could not be examined in review proceedings.

II. RELEVANT DOMESTIC LAW

24. Section 1 of the Associations Act 1989 provides that freedom of association is a fundamental freedom for everyone. It guarantees that everyone shall have the right to form, together with other persons, organisations and communities or to participate in the activities of such associations.

Section 2(2) provides that the exercise of the right to freedom of association may not violate the rights and freedoms of others.

Section 2(3) prohibits the founding of associations primarily for economic or business purposes.

According to section 4(1), as in force when the applicant association's request for registration was examined, subsequent to the founding of an association, its registration must be requested before a court. Registration must not be denied unless the founders have failed to comply with the conditions specified in the Act; associations acquire legal capacity through registration.

Section 7(1) provides that the name and the objectives of an association must not create the impression that the activity it carries on is linked to the activity of another legal person, unless consent thereto is given by that legal person.

According to section 15(3), the courts must decide on requests for registration in non-contentious proceedings; such requests must be given priority. The courts' decisions must also be served on the public prosecutor's office.

25. Article 13 § 3 of Government Decree no. 105/1952 (28 December) provides that in non-contentious proceedings the provisions of the Code of Civil Procedure must be applied, *mutatis mutandis*, unless the legal provisions governing certain non-contentious proceedings provide otherwise or the non-contentious nature of the proceedings excludes that.

26. Article 77 §§ 1 and 4 of Law no. 4 of 1959 on the Civil Code provide that everyone shall have the right to bear a name; it is a violation of this right if anyone unlawfully uses a name identical with or similar to the name of another person.

According to Article 78 §§ 1 and 2, protection of personality rights includes protection of the right to a good reputation; making or disseminating false or defamatory allegations against other persons or portraying real facts in a false way is deemed to be an infringement of the right to a good reputation.

27. Article 2/A § 1 of the Code of Civil Procedure, as in force in the relevant period, provides that, to ensure compliance with the law, the public prosecutor may intervene in civil proceedings at any stage.

According to Article 2/A § 3, when intervening in civil proceedings, the public prosecutor enjoys all the procedural rights which the parties enjoy,

save the rights to negotiate settlements, to waive rights or to acknowledge rights.

28. An extract from Supreme Court (Administrative College) Legal Opinion no. 1 reads as follows: “Before a decision is taken on the registration of an association, it must be examined whether the association's choice of name meets the requirements of the exclusivity, genuineness and correctness of names.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. The applicants complained under Article 6 § 1 that the proceedings concerning the applicant association's registration were unfair.

The relevant parts of Article 6 § 1 of the Convention provide:

> “In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ...”

A. Applicability of Article 6 § 1

30. Referring to section 4(1) of the Associations Act 1989, the applicants contended that although the registration proceedings were characterised by domestic law as non-contentious, their outcome had been decisive for the applicant association's capacity to become the subject of rights and obligations – a consideration bringing the case clearly within the ambit of Article 6 § 1. This was even more so since the registration proceedings also involved a genuine dispute with the public prosecutor's office and, at least indirectly, with APEH as to the applicant association's choice of name.

31. For their part, the Government emphasised, relying essentially on sections 1 and 2(3) of the Associations Act 1989, that under Hungarian law the right of association as such was an issue of a public-law character. In any event, according to section 4(1), associations come into existence only through their registration, prior to which they do not have any legal existence at all, this being a circumstance excluding any civil-law implications of the registration proceedings themselves. As to the dispute about the choice of name, the Government were of the view that the domestic courts' decisions in this respect only concerned the public-law question whether or not the name at issue had been in compliance with the public interest, rather than the civil right to bear a name.

32. The Court reiterates that for Article 6 § 1, in its "civil" limb, to be applicable there must be a dispute (*contestation*) over a "right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

33. In the present case, the "right" in dispute was the right to register an association for the purposes of section 4(1) of the Associations Act 1989. The Court observes that this right as such was recognised under Hungarian law, namely under section 1 of the same Act. The proceedings undoubtedly concerned a genuine and serious dispute as to the existence and exercise of that right.

34. As to whether this right is a "civil" one, the Court reiterates that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law. Article 6 § 1 applies irrespective of the status of the parties, the nature of the legislation which governs the manner in which the dispute is to be determined and the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (see, among many other authorities, the Stran Greek Refineries and Stratis Andreadis v. Greece judgment of 9 December 1994, Series A no. 301-B, p. 78, § 39).

35. The Court notes that, for the purposes of domestic legislation, the matter of the right of association itself primarily belongs to the field of public law. On the other hand, the dispute in the present case essentially arose over the application of rules which are contained in Article 77 and 78 of the Civil Code. In any event, these considerations alone are not decisive for the applicability of Article 6 of the Convention in the instant case.

36. The Court observes that, according to section 4(1) of the Associations Act 1989, associations obtain their legal existence only by virtue of their court registration. It follows from this rule that an unregistered association constitutes only a group of individuals whose position in any civil-law dealings with third parties is very different from that of a legal entity. For the applicants, it was consequently the applicant association's very capacity to become a subject of civil rights and obligations under Hungarian law that was at stake in the registration proceedings.

In these circumstances, the Court finds that the proceedings complained of concerned the applicant association's civil rights and that Article 6 was thus applicable in the instant case.

B. Compliance with Article 6 § 1

37. The applicants submitted that their case had involved a genuine dispute with the public prosecutor's office and, indirectly, with the Tax Authority. In such a dispute the domestic courts should have observed the principle of equality of arms. Since, however, the Regional Court had not informed them either of the letter written by the President of APEH or of the submissions filed by the public prosecutor's office at first and second instance and, moreover, had sent a copy of its order of 28 June 1993 to APEH before it had been served on them, the proceedings fell short of the basic requirements of Article 6 § 1 of the Convention. In that connection, they pointed out that the impugned procedure had enabled APEH's spokesman to present the court order in a television programme and, furthermore, that they had never received a copy of the important submissions of 24 January 1994 by the public prosecutor's office. The fact that their complaint about the Supreme Court's dismissal of their challenge for bias had remained unexamined aggravated the unfair nature of the proceedings.

38. The Government asserted that the letter by the President of APEH had reached the Regional Court prior to the introduction of the applicant association's request for registration and had not, therefore, constituted part of the case file.

Furthermore, the Government pointed out that the submissions by the public prosecutor's office dated 24 January 1994 – in fact its only reasoned submission with any bearing on the substance of the case – had been available to the applicants for comment. As regards submissions by the prosecution at second instance and during the review proceedings, the Government explained that these had only reiterated the prosecution's earlier position and that the failure to notify the applicants thereof had been of little importance.

In sum, the Government argued that neither the prosecution's intervention itself nor the courts' handling of their submissions had been such as to render the proceedings unfair as a whole.

39. The Court recalls that under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent (see the Dombo Beheer B.V. v. the Netherlands judgment of 27 October 1993, Series A no. 274, p. 19, § 33). In this context, importance is attached to appearances (see, *mutatis mutandis*, the Borgers v. Belgium judgment of 30 October 1991, Series A no. 214-B, p. 31, § 24, and the authorities cited therein).

Article 6 § 1 guarantees in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence

adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision (see, among other authorities and *mutatis mutandis*, the following judgments: McMichael v. the United Kingdom, 24 February 1995, Series A no. 307-B, pp. 53-54, § 80; Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 16, § 42; and Lobo Machado v. Portugal, 20 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 206-07, § 31).

40. The Court notes that the public prosecutor's office and the Attorney-General's Office intervened in the proceedings under Article 2/A of the Code of Civil Procedure. That being so, the Court finds that, notwithstanding the non-contentious nature of the proceedings, the rights in Article 6 § 1 should have been respected.

41. While the Court finds it improbable that the letter from the President of APEH to the President of the Regional Court which arrived well before the introduction of the registration request had any repercussion on the conduct of the judge in charge of the case, the same is not true of the intervention by the public prosecutor's office, of which the Regional Court failed to notify the applicants. Furthermore, the fact that a copy of the order of 28 June 1993 was in APEH's possession before its service on the applicants – enabling APEH's spokesman to present it in a television programme – casts doubt on the fairness of the proceedings.

42. As regards the failure to notify the applicants of the submissions by the Attorney-General's Office at second instance, the Court notes the Government's assertion that these submissions had no bearing on the merits of the case. However, it is to be recalled that the principle of equality of arms does not depend on further, quantifiable unfairness flowing from a procedural inequality. It is a matter for the parties to assess whether a submission deserves a reaction and it is inadmissible for one party to make submissions to a court without the knowledge of the other and on which the latter has no opportunity to comment. It was therefore unfair that the applicants were not notified of the submissions made to the Supreme Court by the Attorney-General's Office (see, *mutatis mutandis*, the Bulut v. Austria judgment of 22 February 1996, *Reports* 1996-II, pp. 359-60, § 49 *in fine*).

43. In view of the above, the Court concludes that the principle of equality of arms has not been respected. It does not find it necessary to examine also the question whether or not the applicants were notified of the submissions of the public prosecutor's office dated 24 January 1994 or whether the Hungarian courts were under a further obligation to examine the applicants' complaint about the Supreme Court's dismissal of their challenge for bias.

44. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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."

46. When submitting their application, the applicants claimed in general terms compensation for non-pecuniary damage and costs and expenses. However, subsequently they did not give particulars of these claims, as required by Rule 60 of the Rules of Court, although they were invited to do so.

47. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants. That being so, the Court finds that it is not appropriate to make any award under Article 41.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Dismisses* the applicants' claims for just satisfaction.

Done in English, and notified in writing on 5 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President