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

SECOND SECTION

CASE OF CSÁNICS v. HUNGARY

(Application no. 12188/06)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Csánics v. Hungary,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 12188/06) against the Republic of 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 Sándor Csánics ("the applicant"), on 1 March 2006.

2. The applicant was represented by Mr I. Barbalics, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant, a trade union leader, alleged that his right to freedom of expression, within the meaning of Article 10 of the Convention, had been violated by the decisions of the domestic courts ordering him to arrange for a rectification of assertions he had made in an interview concerning a demonstration organised by the trade union.

4. On 7 September 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Érd.

A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant is the chairman of the Trade Union of Value Transporters and Security Workers *(Értékszállítási és Őrzésvédelmi Dolgozók Szakszervezete),* which represents its members in numerous companies.

8. The applicant was an employee of the security company G. As the chairman of the trade union, he had constant arguments with the company. In 1998 his employment was terminated, which measure was declared illegal by the competent courts in 2000. The applicant alleged that, since then, company G. has not allowed him to enter its premises, even on official trade union business.

9. In March 1999 the applicant lodged a private motion *(magánindítvány)* with the Pest Central District Court against S.K., the managing director of company G., alleging that the latter had committed defamation by saying at a company meeting that the applicant "had taken under his wing criminals who had worked in the company". In September 2003 the Budapest Regional Court, acting as a second-instance court, ultimately found S.K. guilty of defamation and fined him 150,000 Hungarian forints (HUF) (approximately 550 euros (EUR)).

10. In June 2002 the trade union became active in company D. In the second half of the same year, the trade union was informed of an intention to sell company D. and that one of the possible buyers was company G. The employees of company D. opposed the project and, in order to express their opinion, requested the trade union to organise a protest demonstration. This it did in front of the Parliament building. The applicant, as chairman of the trade union, gave interviews to several newspapers concerning the events.

11. On 14 December 2002, a daily newspaper *Színes Mai Lap* published an article which reported the planned sale of company D. and described the demonstration, analysing the background to the events. It interviewed the applicant, who made the following statements.

> "... the other reason [for which we are holding a demonstration] is that 2,500 employees should not lose their livelihood and that such a company [i.e. company G.] which tramples constitutional and labour rights should not be the successor of company D. (...) Because of the inhuman conduct of the management [of company G.]

[the employees] should not have to stay in a place where they were called 'criminals'. We initiated court proceedings in some fifty cases because of that."

12. On 17 January 2003 S.K. brought an action against the applicant before the Budaörs District Court, asking the court to establish that the applicant's statements had infringed his good reputation, to order the applicant to refrain from such acts in the future and to arrange for a rectification to be published.

13. On 17 March 2004 the District Court, finding that it was impossible to identify S.K. directly from the impugned article, dismissed his action. The plaintiff appealed.

14. The Pest County Regional Court was of the view that the District Court's decision had only been a partial decision determining the applicability of the law on defamation. On 8 July 2004, it amended the first-instance decision and established that the plaintiff could be identified from the article in question. Thus he, as an affected person, might lawfully claim the protection of his privacy rights.

15. In fresh proceedings the District Court found, on 24 November 2004, that the applicant had tarnished the plaintiff's good reputation by the impugned statements and ordered him to publish a rectification and pay the plaintiff's court fees in the amount of HUF 82,000 (approximately EUR 300). It established that the applicant's assertions were statements of fact rather than value judgments. It also noted that, although it was true that numerous civil and labour proceedings had been instituted against company G., this fact could not justify defamatory statements.

16. The District Court refused the applicant's request to obtain the decisions adopted in those other proceedings, or to hear witnesses who might be able to prove the veracity of his assertions. It was of the view that this evidence could not possibly render lawful his statements, which in any event were exaggerated and offensive.

17. The applicant appealed. On 7 April 2005 the Pest County Regional Court upheld the first-instance decision. It held that the applicant's assertions were value judgments based on factual allegations expressed in a wholly unlawful manner, since he had articulated his views in a "gratuitously insulting, offensive and harsh way."

18. The Regional Court also referred to a decision of the Supreme Court which had come to the same conclusion in another defamation case instituted directly by company G. against the applicant. It established that the protection of the rights of others constituted a legitimate restriction on freedom of expression even in cases of public interest. However, it established that the present case did not deal with such matters of general concern, even if company D. had many employees.

19. The applicant lodged a petition for review with the Supreme Court. He pointed out that the final decision had erroneously found his assertions to be statements of fact, since they were the expression of an opinion based

on true facts. The applicant also stressed that his aim had been to inform the public about an important matter. Lastly, he was of the view that in expressing his opinion he could not have harmed anyone's reputation, even if he had used harsh terms, and that he had acted in compliance with relevant domestic law, the well-established case-law of the Constitutional Court and the Supreme Court, as well as with European standards.

20. On 8 September 2005 a single judge of the Supreme Court declared the applicant's petition inadmissible. It found that the final decision had been correct and in accordance with law, particularly in view of the nature of the applicant's assertions, which had been gratuitously insulting, offensive and harsh, and violated the plaintiff's privacy irrespective of their value judgment content. The Supreme Court also pointed out that the right to freedom of expression was not unlimited and should not violate the personality rights of others.

B. Relevant domestic law

1. The Civil Code

Section 78

"(1) The protection of personality rights shall also include the protection of the good reputation of others.

(2) In particular, the statement or dissemination of an injurious and untrue fact concerning another person – or the presentation, with untrue implications, of a true fact relating to another person – shall constitute defamation."

Section 84

"(1) A person whose personality rights have been infringed may bring the following civil-law claims, depending on the circumstances of the case:

a) a claim that the court establish that an infringement has taken place;

b) a claim that the infringement be discontinued and the perpetrator be forbidden from further infringements;

c) a claim that the perpetrator be ordered to give satisfaction by making a declaration or in any other appropriate manner and, if necessary, this be made adequately public by, or at the expense of, the perpetrator;

d) a claim that the prejudicial situation be terminated, and that the situation prior to the infringement be restored by, or at the expense of, the perpetrator ...;

e) a claim for damages under the rules of civil law liability."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant complained that the domestic courts' decisions imposing sanctions on him for expressing his views concerning a demonstration, which had been organised by the trade union of which he was the chairman, had violated his right to freedom of expression within the meaning of Article 10 of the Convention. This provision in so far as relevant reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the reputation or rights of others, ..."

A. Admissibility

22. The Government argued that the application had been submitted outside the six-month time-limit laid down in Article 35 § 1 of the Convention. They observed that the final decision in the case was given by the Regional Court on 7 April 2005. However, the application was only lodged on 1 March 2006. The applicant's petition for a review by the Supreme Court could not, in their view, be regarded as an effective remedy in the circumstances, since it did not meet the statutory requirements and was rejected at the admissibility stage. It did not, therefore, interrupt the running of the six-month time-limit.

23. The applicant contested this view. He maintained that the Supreme Court, although it had dismissed his petition at the admissibility stage, had in fact dealt with the merits of the case.

24. The Court observes that the Supreme Court did not reject the applicant's petition as being wholly futile; instead, it adopted a reasoned decision in the matter. In these circumstances, it is satisfied that the order delivered on 8 September 2005 constituted the final domestic decision in the case and that the six-month rule has been complied with (see *Tsomtsos and Others v. Greece*, 15 November 1996, § 32, *Reports of Judgments and Decisions* 1996-V). Moreover, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the exercise of freedom of expression

25. The Government did not dispute that the applicant could rely on the guarantees contained in Article 10; nor did they deny that the decisions of the domestic courts interfered with the exercise of his rights under that provision. The Court sees no reason to hold otherwise. The Government contended, however, that the interference was justified under the second paragraph of Article 10.

2. Whether the interference was justified

26. It must therefore be determined whether the measure complained of was "prescribed by law", prompted by one or more of the legitimate aims set out in paragraph 2, and was "necessary in a democratic society" to achieve them.

a. Prescribed by law

27. There was no dispute between the parties that the restriction imposed on the applicant's freedom of expression was based on sections 78 and 84 of the Civil Code, the wording of which is clear. Therefore, the requirement of lawfulness was satisfied.

b. Legitimate aim

28. The Government submitted that the restriction on the right to freedom of expression served to protect the rights of others, namely the good reputation of the plaintiff.

29 The applicant did not address this issue.

30. The Court is satisfied that the measure complained of pursued the legitimate aim of protecting the rights of others.

c. Necessary in a democratic society

(i) The arguments of the parties

31. The Government submitted that the applicant's assertions, which directly concerned his former employer, were statements of fact rather than value judgments. They were of the view that the mere existence of labour and criminal proceedings instituted against the plaintiff could not serve as a basis for the applicant's allegations or justify statements violating the former's good reputation. They also pointed out that the Contracting States enjoyed a certain margin of appreciation when limiting the rights enshrined in Article 10. The Government were of the view that, since the applicant's

declarations were statements of fact capable of harming S.K.'s reputation, he had overstepped the Convention limits of freedom of expression.

32. The Government also maintained that the applicant could have articulated his criticism without using the impugned expressions. They pointed out in this connection that it had been irrelevant to prove the veracity of his statements since they had in any event been too harsh and exaggerated vis-à-vis a person who was not a public figure or a politician. They maintained that it was generally for the domestic courts to decide on the relevance of requests to hear evidence. Lastly, the Government held that the courts had sanctioned the applicant in order to protect the plaintiff's good reputation. Therefore, the decisions of the domestic courts could not be regarded as interference unnecessary or disproportionate in a democratic society.

33. The applicant submitted that S.K. could not have been identified from his statements, therefore, his good reputation could not have been tarnished. He also maintained that his assertions were value judgements based on true information. He drew attention to the fact that S.K. had been found guilty of defamation – he had called some of his employees, among them the applicant, criminals. He added that, unlike S.K., he had been deprived of any possibility to prove the veracity of his allegations.

34. Moreover, the applicant noted that his statements had not been self-contained, discrediting or humiliating criticism but a manifestation of the protection of employees' rights. It was true that the plaintiff was not a public figure, but the high number of the employees concerned made the issue a subject of considerable public interest. In the applicant's view, as a trade union leader, he had had no other choice but to stand up for those rights in the impugned manner. Lastly, he maintained that if the manner in which domestic courts had dealt with the case became standard practice, it would endanger the effective exercise of trade union rights. Therefore, the interference could not be regarded as necessary or proportionate in a democratic society.

(ii) The Court's assessment

α. General principles

35. The Court reiterates that the test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy*

[GC], no. 48898/99, § 39, ECHR 2003-V; *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

36. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire* v. France [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith. The Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held against the applicant and its context (see *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

37. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII).

β. Application of these principles to the present case

38. The Court observes that the applicant stated in essence that the plaintiff had constantly breached his employees' constitutional and labour rights in particular by calling them, including the applicant, criminals. The Court also notes that the Hungarian courts held that the impugned statements were statements of fact, rather than value judgments concerning the plaintiff's professional activity. They were of the view that the applicant's assertions had been expressed in such a harsh and exaggerated manner that they had given rise to a violation of S.K.'s personality rights irrespective of whether they were true or false.

39. In order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see, for example, *Lingens v. Austria*, 8 July 1986, § 46; Series A no. 103, *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 63, Series A no. 204,). The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts

(see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

40. In the Court's view, the present case concerns two interrelated assertions. Concerning the first one, namely, that in company G. the employees' rights had been trampled by the inhuman conduct of the management, the Court considers that the applicant was assessing company G.'s behaviour in general, and his declaration amounted to a value judgment. As to the second issue – namely that, according to the applicant, company G. considered him and his colleagues as criminals – the Court sees no reason to depart from the domestic courts' finding that this statement was essentially factual. For the Court, such utterances were, at least in part, susceptible of proof.

41. The Court therefore finds striking that the domestic courts considered the manner in which the applicant expressed his statements "gratuitously insulting, offensive and harsh" and gave him no opportunity at all to prove the veracity of his assertions. The Court draws attention to the fact that in December 2003 the plaintiff was found guilty of defamation for having alleged that the applicant had been supporting criminals; his employment was terminated illegally and, moreover, he had difficulty entering the company's premises, even on trade union business (see paragraphs 8 and 9 above). Furthermore, it was not disputed between the parties that numerous labour proceedings instituted against company G. were pending at the material time.

42. For the Court, it is therefore more likely that the applicant's impugned statements were well-founded or that at least he voiced them in good faith, in compliance with the minimum requirement applicable to those who engage in public debate (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 90, ECHR 2005-II). The Court observes in that connection that – given the number of employees concerned – the dispute at issue was a debate on matters of public interest, where there is little scope for restrictions (see *Wingrove v. the United Kingdom*, 25 November 1996 *Reports* 1996-V, § 58; and *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV).

43. Consequently, the Court considers that the domestic authorities should have provided the applicant with an opportunity to substantiate his statements. It would go against the very spirit of Article 10 to allow a restriction on the expression of substantiated statements solely on the basis of the manner in which they are voiced. In principle, it should be possible to make true declarations in public irrespective of their tone or negative consequences for those who are concerned by them.

44. The Court acknowledges that the accusation levelled by the applicant's allegations was serious. However, as shown above (paragraph 41), there was a sufficient factual basis to support it. Moreover, the Court observes that the applicant made the impugned statements in a debate on matters of public interest, namely in the course of a collective labour dispute. The Court is aware of the fact that, given what is at stake, the tone of such disputes is often heated. It is of the view that these debates, since they concern the core interests of employees, require a high level of protection under Article 10 (see, for example, *Steel and Morris v. the United Kingdom*, cited above, § 88).

45. The Court considers that the applicant, a trade union leader, formulated his statements in a manner commonly found in labour disputes. It is not therefore persuaded by the domestic courts' findings that he overstepped the limits of tolerable criticism since that would constitute an unacceptable restriction not only on the applicant's right to freedom of expression, but also on the effective functioning of trade unions. In sum, it can be concluded that the correct balance was not struck between the need to protect the applicant's freedom of expression and the need to protect the plaintiff's rights and reputation.

46. Lastly, the Court observes that the domestic courts imposed a relatively mild sanction on the applicant: they ordered him to arrange for a rectification to be published and pay the court costs. This mild sanction does not, however, render the restriction compatible with the Convention if it is not in itself necessary in a democratic society (*Turhan v. Turkey*, no. 48176/99, § 29, 19 May 2005), which is indeed the Court's finding in the present case.

47. In conclusion, the Court finds that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 6 AND 11 OF THE CONVENTION

48. The applicant alleged that the domestic courts had breached Article 6 of the Convention (the right to a fair hearing) by not allowing him to prove his allegations. He also relied on Article 11 (freedom of association). However, the Court considers that, although these complaints are admissible, in the light of its finding above of a violation of Article 10 of the Convention (see paragraphs 44-47), it is unnecessary to examine the merits of these matters separately.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The Court observes that the applicant made a complaint under Article 13 of the Convention concerning an alleged lack of effective

domestic remedies. The aim of Article 13 being one of procedures, not of results, the Court notes that this complaint is wholly unsubstantiated since three court instances dealt with the merits of the applicant's case. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government considered the applicant's claim excessive.

53. The Court finds that the applicant can reasonably be deemed to have suffered some non-pecuniary damage in the circumstances. Making its assessment on an equitable basis, the Court awards him EUR 3,000 under this head.

B. Costs and expenses

54. The applicant also claimed EUR 1,000 for the legal fees incurred before the domestic courts and the Court. This figure corresponded to the court fees before the domestic tribunals (approximately EUR 400), his lawyer's fee (approximately EUR 400) and EUR 200 for clerical expenses. He submitted the domestic courts' decisions as proof of the court fees, and his agreement with his lawyer concerning the latter item.

55. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the sum claimed in its entirety under this head.

C. Default interest

56. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Declares* the complaints concerning freedom of expression, the unfairness of the proceedings and freedom of association admissible;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there is no need to examine separately the complaints under Articles 6 and 11 of the Convention;

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 1,000 (one thousand 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President