



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

SECOND SECTION

CASE OF KARAKÓ v. HUNGARY

(Application no. 39311/05)

JUDGMENT

STRASBOURG

28 April 2009

FINAL

28/07/2009

This judgment may be subject to editorial revision.

In the case of Karakó 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,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 17 March and 7 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 39311/05) 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 László Karakó (“the applicant”), on 26 October 2005.

2. The applicant was represented by Mr L. Kovátsits, 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 alleged in particular that the Hungarian authorities’ failure to pursue his charges of libel against his political opponent amounted to a breach of his rights under Article 8 of the Convention.

4. On 5 May 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Gávavencsellő.

7. The applicant is a Member of Parliament and delegate of the political party Fidesz – the Hungarian Civic Union (the “Fidesz”). During the parliamentary elections of 2002, he was a candidate in one of the electoral districts of Szabolcs-Szatmár-Bereg County. On 19 April 2002, prior to the second ballot round, a flyer was distributed in the applicant’s electoral district, signed by L.H., chairman of the Szabolcs-Szatmár-Bereg County Regional General Assembly. The flyer read as follows:

“Dr. László Karakó, in his capacity as a member of the Fidesz... in the Regional General Assembly, regularly voted against the interests of the county. Moreover, in the debate concerning the route of the M3 highway, he did not support the version favourable to the county, with which – aside from the county – he probably harmed his own electoral district the most.”

8. On 15 May 2002 the applicant filed a criminal complaint against L.H. with the Nyíregyháza District Court, accusing him of libel. Finding that the impugned act fell within the competence of public prosecution, the District Court transferred the case to the Nyíregyháza District Public Prosecutor’s Office in March 2004.

9. The Public Prosecutor’s Office ordered the continuation of the criminal proceedings in April 2004. On 3 May 2004 the Public Prosecutor’s Office terminated the investigation, finding that there had been no crime committed within the realm of public prosecution. The applicant stated that this decision was only served on him on 1 December 2004. He lodged a complaint against this decision which was dismissed by the Szabolcs-Szatmár-Bereg County Regional Public Prosecutor’s Office on 22 December 2004. The Prosecutor’s Office was of the view that the impugned act had occurred during the electoral campaign and, as a candidate, the applicant could not have been considered a public official. Therefore, the act did not concern a matter of public prosecution. The applicant submitted an application seeking a review of this decision to the Attorney General’s Office. It dismissed his application on 28 February 2005.

10. On 29 January 2005 the applicant, acting as a private prosecutor, submitted an indictment against L.H. to the Nyíregyháza District Court, accusing the latter of having committed libel against him as a public official during official proceedings.

11. On 2 May 2005 the District Court dismissed the applicant’s indictment. It found that the impugned statement was a value judgment, with regard to which the limits of acceptable criticism were wider for a

politician – who must display a greater degree of tolerance. No appeal lay against this decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

12. The applicant complained that the authorities failed to protect his rights under Article 8 of the Convention as they did not pursue criminal libel proceedings against a political opponent who had allegedly defamed him. Article 8, insofar as relevant, provides as follows:

“1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime ,... or for the protection of the rights and freedoms of others.”

A. Admissibility

13. The Government submitted that the applicant should have brought a civil action against L.H. seeking damages, which was in their opinion an effective remedy to exhaust in the circumstances. The applicant contested this view.

14. The Court observes that the applicant pressed criminal charges against L.H., accusing him of libel. When the prosecution authorities decided not to pursue the case, he embarked on a private prosecution. In this respect, the Court recalls that, where several remedies are available, the applicant is not required to pursue more than one (*Granger v. the United Kingdom* (no. decision of 9 May 1988) and it is normally that individual’s choice as to which (see *mutatis mutandis*, *Hilal v. the United Kingdom*, no. 45276/99, decision of 8 February 2000; *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). Consequently, the Court considers that the present applicant cannot be required to avail himself of an additional legal avenue in the form of a civil action (see *mutatis mutandis* *Barta v. Hungary*, no. 26137/04, § 47, 10 April 2007). It is satisfied that the applicant has thus exhausted domestic remedies. Consequently, the Government’s objection must be dismissed and the complaint declared admissible.

B. Merits

1. The parties' arguments

15. The Government submitted that it was primarily for the national authorities to assess whether or not the impugned conduct amounted to a criminal act. They recalled the principle clearly set out in the Court's case-law according to which the classification of a statement as a fact or as 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.

16. The applicant argued that neither the prosecution authorities nor the District Court had carried out a thorough examination of his criminal complaint. As a result, his right to reputation, which the Hungarian authorities were under an obligation to protect pursuant to Article 8 of the Convention, had been violated. He stressed that the impugned statement had targeted him as an official rather than a politician – a consideration ignored by the domestic authorities. In his view, the ruling of the domestic court was also incompatible with the second paragraph of Article 10 of the Convention, which provides insofar as relevant as follows:

"1. Everyone has the right to freedom of expression. ...

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, in the interests of ... the protection of the reputation or rights of others ..."

2. The Court's assessment

17. The Court is satisfied that the purported conflict between Articles 8 and 10 of the Convention, as argued by the applicant, in matters of protection of reputation, is one of appearance only. To hold otherwise would result in a situation where – if both reputation and freedom of expression are at stake – the outcome of the Court's scrutiny would be determined by whichever of the supposedly competing provisions was invoked by an applicant.

18. In the instant case, the applicant submitted that, by refusing to prosecute his opponent for allegedly ruining his reputation in the voters' eyes, the Hungarian authorities had failed to protect his right to private life as defined by Article 8. For the Court, this claim implies that the right to reputation is an independent right protected by Article 8 of the Convention which the State has a positive obligation to protect.

19. At the outset, the Court emphasises the importance of a prudent approach to the State's positive obligations to protect private life in general and of the need to recognise the diversity of possible methods to secure its respect. In this field, the nature of the State's obligation depends on the

aspect of private life concerned, and the choice of measures designed to secure compliance with that obligation falls within the Contracting States' margin of appreciation. The Court considers, as a minimum requirement, that an effective legal system must be in place and operating for the protection of the rights falling within the notion of "private life", and it is satisfied that such a system was indeed available to the applicant in the present case.

20. In regard to cases in which a violation of the rights guaranteed in Article 8 is asserted and the alleged interference with those rights originates in an expression, the Court points out that the protection granted by the State should be understood as one taking into consideration its obligations under Article 10 of the Convention. It is the latter provision which has been specifically designed by the drafters of the Convention to provide guidance concerning freedom of speech – also a core issue in the present application.

21. In addressing this problem, the Court reiterates that "private life" includes personal identity (*Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004–VI). The Court further observes that the Convention, as interpreted in the *Von Hannover* judgment regarding the individual's image, extends the protection of private life to the protection of personal integrity. This approach itself results from a broad interpretation of Article 8 to encompass notions of personal integrity and the free development of the personality.

22. Concerning the question whether or not the notion of "private life" should be extended to include reputation as well, the Court notes that the references to personal integrity in the *Von Hannover* judgment reflect a clear distinction, ubiquitous in the private and constitutional law of several Member States, between personal integrity and reputation, the two being protected in different legal ways. In the legislation of several Member States, reputation has traditionally been protected by the law of defamation as a matter related primarily to financial interests or social status.

23. For the Court, personal integrity rights falling within the ambit of Article 8 are unrelated to the external evaluation of the individual, whereas in matters of reputation, that evaluation is decisive: one may lose the esteem of society – perhaps rightly so – but not one's integrity, which remains inalienable. In the Court's case-law, reputation has only been deemed to be an independent right sporadically (see *Petrina v. Romania*, no. 78060/01, 14 October 2008, and *Armonienė v. Lithuania*, no. 36919/02, 25 November 2008) and mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life. However, in the instant case, the applicant has not shown that the publication in question, allegedly affecting his reputation, constituted such a serious interference with his private life as to undermine his personal integrity. The Court therefore concludes that it was the

applicant's reputation alone which was at stake in the context of an expression made to his alleged detriment.

24. The Court reiterates that paragraph 2 of Article 10 recognises that freedom of speech may be restricted in order to protect reputation (see paragraph 16 above). In other words, the Convention itself announces that restrictions on freedom of expression are to be determined within the framework of Article 10 enshrining freedom of speech.

25. The Court is therefore satisfied that the inherent logic of Article 10, that is to say, the special rule contained in its second paragraph, precludes the possibility of conflict with Article 8. In the Court's view, the expression "the rights of others" in the latter provision encompasses the right to personal integrity and serves as a ground for limitation of freedom of expression in so far as the interference designed to protect private life is proportionate.

26. It follows that, notwithstanding the fact that the applicant claims a violation of Article 8 of the Convention, the Court has to determine whether the principles inherent to Article 10 were properly applied by the Hungarian authorities.

27. The Court observes that the impugned statement was found to be a value judgment and, as such, a protected expression under Hungarian law. In reaching this conclusion, the authorities took into account that the applicant was a politician, active in public life, and that the statement was made during an election campaign in which he was a candidate, and constituted a negative opinion regarding the applicant's public activities. On these grounds, they found that it was constitutionally protected. The Court is satisfied that this decision was in conformity with Convention standards (for a summary of the relevant case-law, see *Feldek v. Slovakia*, no. 29032/95, §§ 72-74, ECHR 2001-VIII; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI).

28. The above considerations enable the Court to find that the applicant's allegation that his reputation as a politician has been harmed is not a sustainable claim regarding the protection of his right to respect for personal integrity under Article 8 of the Convention. A limitation on freedom of expression for the sake of the applicant's reputation in the circumstances of the present case would have been disproportionate under Article 10 of the Convention.

29. Consequently, the Court concludes that there has been no violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. Relying on Article 6 of the Convention, the applicant complained of unfairness and the excessive length of the proceedings in which he had sought the prosecution of his opponent. The Court reiterates that Article 6

does not grant a right or apply to proceedings with a view to having third persons convicted of a criminal offence. This complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

31. The applicant also complained under Article 10 of the Convention about the outcome of the proceedings. The Court observes in this connection that the impugned statement was not made by the applicant but by his political opponent. It follows that – the applicant’s own freedom of speech not having been at stake – the facts of the case do not give rise to any issue under Article 10 from the applicant’s perspective. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

32. Lastly, the applicant complained under Article 13 of the Convention that the procedures before the Hungarian authorities did not provide him with an effective remedy concerning the alleged infringement of his rights under Article 8. However, the Court notes that the applicant’s complaint was fully examined by the prosecuting authorities and a court. Consequently, the applicant had adequate domestic remedies at his disposal and his complaint under Article 13 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 28 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring opinion of Judge Jočienė is annexed to this judgment.

F.T.
S.D.

PARTLY CONCURRING OPINION OF JUDGE JOCIENE

1. I agree with the majority's finding in this case that there has been no violation of Article 8 of the Convention and I voted to that effect. I also agree with the majority that paragraph 2 of Article 10 of the Convention refers to the reputation aspect and that freedom of expression and the right to protection of privacy, including reputation, should be carefully balanced. Nevertheless, I think that protection of reputation, as an aspect, indistinguishable from a person's privacy (personal integrity) should be concentrated under and protected by Article 8 of the Convention. Paragraph 2 of Article 10 should be applicable only in cases where the balancing test must be carried out in order to establish the necessity and proportionality of an interference with freedom of expression.

2. With regard to the arguments used in the analysis, I note that in paragraph 21 of the judgment, the majority, referring to the case of *Von Hannover v. Germany* (no. 59320/00, § 50, ECHR 2004-VI), observed that the Convention, as interpreted in the *Von Hannover* judgment regarding an individual's image, extends the protection of a person's private life to the protection of personal integrity. However, the Court said at § 50 of that judgment that the concept of private life "extends to aspects relating to personal identity, such as a person's name (see *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280-B, p. 28, § 24), or a person's picture (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002)". This means, in my opinion, that the Court interpreted a person's picture as part of a person's private life relating to his personal identity (and not personal integrity). Furthermore, the Court held in the same § 50 of that judgment that "private life ... includes a person's physical and psychological integrity [...]."

3. In the case of *Pfeifer v. Austria* (no. 12556/03, §§ 33-34), with regard to the applicability of Article 8, the Court also reiterated that "private life" extends to the individual's *personal identity, such as a person's name or picture*, and, furthermore, includes a person's physical and psychological integrity. In § 34 of the *Pfeifer* judgment, the Court found that the publication of a person's photograph fell within the scope of his or her private life even where the person concerned was a public figure (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002, and *Von Hannover*, cited above, § 53). Therefore, in my opinion, and I conclude on this point, this protection of an individual's image or photograph extended the guarantee of respect for private life to the protection of personal identity, but not personal integrity.

4. With regard to paragraphs 22 and 23 of the present judgment and especially the question (see paragraph 22), as to whether the notion of "private life" should be extended to include reputation as well, I think that

such a question is unnecessary, because the jurisprudence of the Court has been clearly developed on this point. In the said *Pfeifer v. Austria* case the Court stated: “It has already been accepted in the Convention organs’ case-law that a person’s right to protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life”.

In another case, *Chauvy and Others v. France* (no. 64915/01, § 70, ECHR 2004-VI), concerning a complaint under Article 10, the Court found that a person’s reputation, which was affected by the publication of a book, was protected by Article 8 as part of the right to respect for private life and had to be balanced against the right to freedom of expression. This approach was followed in *Abeberry v. France* ((dec.), no. 58729/00, 21 September 2004) and *Leempoel & S.A. ED. Ciné Revue v. Belgium* (no. 64772/01, § 67, 9 November 2006). I agree that the right to the protection of a person’s reputation and honour, as such, was left open in *Gunnarsson v. Iceland* ((dec.), no. 4591/04, 20 October 2005). However, in the *Pfeifer* case (§ 35), the Court came to the conclusion that *a person’s reputation*, even if that person is criticised in the context of a public debate, forms *part of his or her personal identity and psychological integrity* and therefore also falls within the scope of his or her “private life”, and Article 8 therefore applies.

5. The same approach was followed in the more recent judgment of *Petrina v. Romania* (no. 78060/01, judgment of 14 October 2008, §§ 28-29), to which the majority make no reference, but where the Court confirmed that a person’s reputation is protected by Article 8 of the Convention as an integral part of his or her private life.

Therefore, I think that the question in paragraph 22 of the present judgment is not needed for the reasons explained above. Furthermore, I cannot agree with the majority’s position in paragraph 23 that a person’s reputation has been deemed to be an independent right only sporadically, or mostly when the factual allegations were of a serious nature. In my opinion, it is clear from the jurisprudence of the Court which I have cited above that a person’s reputation falls within the scope of “private life” and attracts the protection of Article 8, not only sporadically but whenever it is justified according to the circumstances of the concrete case.

6. I am not sure that the reference at paragraph 23 of the present judgment to the case of *Armonienė v. Lithuania* (no. 36919/02, 25 November 2008) is needed, for the very simple reason that, like the case of *Biriuk v. Lithuania* (no. 23373/03, 25 November 2008), that applicant was not complaining about a loss of reputation, or any related aspect, due to the impugned publications. Ms Armonienė complained about a breach of privacy under Article 8 (in general), relying on the fact that the State had failed to secure her family’s right to respect for their private life as a result of the derisory award for non-pecuniary damages to her late husband, even though the domestic courts had found that a serious violation of his privacy

had been committed by the newspaper *Lietuvos Rytas*. This was not therefore a question of reputation, but a question of statutory ceilings which restricted the compensation obtainable to a very limited amount.

7. Lastly, taking into account the fact that, in my opinion, the Court's jurisprudence is not clear enough to answer the question whether reputation, as a part of the notion of "private life" and protected under Article 8 of the Convention (which is clear from our jurisprudence), is protected as a separate aspect or is included in the protection of personal identity, distinguishable from personal integrity (as the majority propose in paragraphs 22 and 23 above), that matter should be left open for the time being and, in my view, needs careful future consideration.