AS TO THE ADMISSIBILITY OF

Application No. 23317/94
by Lajos and Lajosné BERECZKI
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 October 1993 by Lajos and Lajosné BERECZKI against Hungary and registered on 25 January 1994 under file No. 23317/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 9 June 1994 and the observations in reply submitted by the applicants on 9 August 1994;

Having deliberated;

Decides as follows:

THE FACTS

The facts, as they have been submitted by the parties, may be summarised as follows.

The applicants, a married couple, are Hungarian citizens born in 1925.

A. Particular circumstances of the case

The applicants were members of the Chamber of Békés County Lawyers (Békés Megyei Ügyvédi Kamara) from 1956 until 1987 and from 1970 until 1985, i.e. for 31 and 15 years respectively. During this period both of them practised in Mezoberény as members of the Mezoberény Law Office (Mezoberényi Ügyvédi Munkaközösség). They contributed and contributed 31,139% and 14,931%, respectively, to the costs of a building built as a law office and owned by the Chamber of Békés County Lawyers. The applicants used the building until they retired as lawyers in 1985 and 1987 respectively, and ceased to be members both of the Chamber and the law office.

According to Law No. XXIII of 1991 (1991. évi XXIII. törvény), the assets of the chambers of lawyers should be divided among the law offices which could divide them among the lawyers who are members of the law office. The National Chamber of Lawyers subsequently issued a circular (No. 21/1991) suggesting that all law offices should provide former members of the law offices with an appropriate sum.

In April 1991 the Chamber of Békés County Lawyers decided that all the property used by the Mezoberény Law Office should be transferred to it. The Law Office was also given 197,500 Hungarian Forint (about 12,000 FF) from members' former contributions. It was up to the three lawyers working at the Law Office at that time to decide upon the division of these assets.

On 3 September 1991 the three members of the Law Office concerned decided unanimously to divide the 197,500 Hungarian Forints among themselves. As regards the building, they decided unanimously to take 60% of its real value on the ground that it was used by them, and to give 31,139% and 14,931% of this value to the applicants, respectively. They also decided to dissolve the Law Office.

On 6 September 1991 they informed the applicants about these decisions, who lodged an appeal with the Chamber of Békés County Lawyers alleging that the division of assets was wrong and unfair.

On 30 September 1991 the Chamber of Békés County Lawyers dismissed the appeal. It also stated that there was no further appeal.

The applicants then instituted civil proceedings against the three members of the Law Office concerned.

On 24 March 1992 the Gyula Municipal Court (Városi Bíróság) rejected the action without summoning the applicants (keresetlevél idézés kibocsátása nélküli elutasítása) and without a hearing. The Court, referring to S. 130 para. 1 (b) of the Code of Civil Procedure (1952. évi III.) found that it had no competence to decide on a decision of a Chamber of Lawyers and that the applicants in fact were complaining about the refusal of their appeal by a Chamber of Lawyers. The Court therefore considered that the applicants had no locus standi. The Court also observed that the applicants could challenge the decision of the Chamber of Lawyers before the National Chamber of Lawyers.

On 23 June 1992 the Békés Regional Court (Megyei Bíróság), sitting in private, rejected the applicants' appeal.

On 9 November 1992 the President of the Hungarian Supreme Court (Magyar Köstársaság Legfelsobb Bírósága) refused the applicants' petition for a review on legal grounds (törvényességi óvás) .

On 3 May 1993 the Constitutional Court (Alkotmánibíróság), in proceedings brought by retired lawyers in a similar position as the applicants, rejected motions to declare Law XXIII of 1991, to the extent that the provisions on the distribution of the assets of the Chambers of Lawyers were concerned, unconstitutional. The Constitutional Court observed that the relevant rules formed part of the reorganisation of the profession of lawyers, which had been exercising their profession only as members of a collective of lawyers. They aimed at creating in particular the financial conditions for a free exercise of this profession. The assets of a Chamber of Lawyers were therefore to be distributed to the active members, not to retired lawyers.

On 24 May 1993 the National Chamber of Lawyers dismissed the applicants' complaint about the decision of the Chamber of Békés County Lawyers, and the allegedly incorrect distribution of the assets of the

Mezoberény Law Office. The National Chamber did not find the solution chosen by the Mezoberény Law Office equitable but saw no point in intervening.

B. Relevant domestic law

Law No. XXIII of 1991 (1991. évi XXIII. törvény) relates to the reorganisation of the profession of lawyers. It provides in particular for the distribution of the assets and offices of the Chambers of Lawyers.

S. 25 para. 1 of Law No. XXIII of 1991 provides that anybody who is affected by a decision of the general assembly of a law office may file, within fifteen days from the communication of the decision, an appeal against that decision with the Presidency of the Chamber of Lawyers. The appeal has suspensive effect.

According to S. 39 of Law No. XXIII of 1991, the distribution, among the law offices, of the assets of a Chamber of Lawyers, belongs to the competence of the general assembly of the Chamber of Lawyers. The decision passed by the general assembly of the Chamber of Lawyers or the Presidency thereof may be set aside by the Presidency of the National Chamber of Lawyers.

S. 130 para. 1 (b) of the Code of Civil Procedure (1952. évi III.) provides that the court shall reject an action without issuing a summons in particular if the enforcement of the plaintiff's claim falls under the jurisdiction of another court or public authority.

The petition for a review on legal grounds (törvényességi óvás) with the Attorney General (Legfobb Ugyész) or the President of the Supreme Court (Magyar Köstársaság Legfelsobb Bírósága) was an extraordinary remedy, available until 31 December 1992, and based on a discretionary decision. On 1 January 1993 Law LXVIII of 1992 (1992. évi LXVIII törvény) for civil proceedings, and Law LXIX of 1992 (1992. évi LXIX törvény) for criminal proceedings, introduced the possibility to request the Supreme Court to review a court decision.

COMPLAINTS

The applicants complain under Article 6 para. 1 of the Convention that they did not have a fair and public hearing.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 October 1993 and registered on 25 January 1994.

On 6 April 1994 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 9 June 1994. The applicants replied on 9 August 1994.

THE LAW

The applicants complain that they did not have a fair and public hearing before a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1), so far as relevant, provides that "in the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by a ... tribunal established by law."

The Government submit that the application is incompatible

ratione temporis. They consider that the facts complained of took place prior to the entry into force of the Convention with respect of Hungary, and that the decisions taken by the Supreme Court on 9 November 1992, the Constitutional Court on 3 May 1993 and the National Chamber of Lawyers on 23 May 1993, respectively, cannot be taken into account for these purposes. As regards the decision of the National Chamber of Lawyers, the Government submit in particular that the question before the Chamber was the allegedly incorrect distribution of the assets of the Law Office and not the lack of access to a court. Moreover, the procedure before the National Chamber of Lawyers could not be regarded as a remedy for the purposes of Article 26 (Art. 26) of the Convention.

The applicants dispute this view and argue that the National Chamber of Lawyers intended to decide on the merits of their case.

The Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146).

The Commission observes that the Chamber of Békés County Lawyers decision on the transfer of assets to the Mezoberény Law Office dates back to April 1991. The members of the Law Office concerned decided on the distribution of assets on 3 September 1991. On 30 September 1991 the Chamber of Békés County Lawyers dismissed the applicants' appeal. The applicants' civil action against the lawyers of the Law Office concerned was rejected by the Gyula Municipal Court on 24 March 1992, as confirmed by the Békés Regional Court on 23 June 1992.

The Commission considers that this decision of the Békés Regional Court of 23 June 1992 constitutes the final decision on the question of the applicants' access to a court regarding the distribution of the assets of the Mezoberény Law Office. The matter complained of therefore dates back to a period prior to 5 November 1992, which is the date of the entry into force of the Convention with respect to Hungary.

It is true that several decisions were taken after 5 November 1992.

However, the Commission finds that applicants' petition with the President of the Supreme Court for a review on legal grounds, which was refused on 9 November 1992, did not, given its extraordinary and discretionary nature, constitute an effective remedy according to the generally recognised rules of international law (cf., mutatis mutandis, No. 8395/78, Dec. 16.12.89, D.R. 27 p. 50). These proceedings are, therefore, irrelevant for defining the Commission's competence ratione temporis.

The Commission further notes that the Constitutional Court's decision of 3 May 1993 on a petition brought by retired lawyers in a similar position as the applicants concerned the general question of constitutionality of the law at issue. However, the specific matter raised by the applicants in their application before the Commission is the lack of a public hearing by a tribunal within the meaning of Article 6 para. 1 (Art. 6-1). These proceedings cannot, therefore, affect the Commission's finding as to the final decision in the present case.

Finally, the Commission has noted the applicants' argument that the decision of the National Chamber of Lawyers of 24 May 1993 should be regarded as the final decision in their case. However, the National Chamber of Lawyers, as a body within the organisational structure of the lawyers profession, only dealt with the applicants' complaint about the decision of the Chamber of Békés County Lawyers, and the allegedly incorrect distribution of the assets of the Mezoberény Law Office. A complaint with this body cannot be regarded as an effective remedy in

respect of the lack of a public hearing by a tribunal within the meaning of Article 6 para. 1 (Art. 6-1). Consequently, these proceedings cannot be considered for the purpose of establishing the Commission's competence ratione temporis, either.

It follows that the application is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)