AS TO THE ADMISSIBILITY OF

Application No. 26692/95
by Gábor BETHLEN
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 10 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 16 January 1995 by Gábor BETHLEN against Hungary and registered on 14 March 1995 under file No. 26692/95;

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

Having regard to:

- the observations submitted by the respondent Government on 14 February 1996;

- the applicant's submissions of 16 January 1995;

- the observations in reply, submitted by the applicant's representative on 10 April 1996;

- the supplementary observations of 30 August 1996, submitted by the respondent Government.

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1946, is a Hungarian national residing in Nyírmártonfalva, Hungary. He is a farmer by profession. Before the Commission he is represented by Mr. Cs. Józsa, a lawyer practising in Debrecen.

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

A. Particular circumstances of the case

On 16 October 1993 at 11 a. m. the applicant was arrested by Police Officer N.

The applicant claims that, in the course of his arrest and subsequent detention, he was kicked and beaten up, in particular by Police Officer N., and that, due to this ill-treatment, he suffered several bruises.

On 30 December 1993 the Hajdúhadház Police Headquarters (Hajdúhadházi Rendorkapitányság), acting as the first instance contravention authority, convicted the applicant of riding a bicycle in a state of intoxication and refusing to identify himself and imposed a fine of HUF 30,000 on him. Upon the applicant's objection, he was acquitted of the contraventions of riding a bicycle in an intoxicated state and refusing to identify himself. However, he was fined for not having kept his identity card with him.

On 15 February 1994 the Debrecen Prosecution's Department of Investigation (Debreceni Ügyészségi Nyomozó Hivatal) terminated the investigation against Police Officer N. The decision was served upon the applicant on 21 February 1994.

On 18 March 1994 the Debrecen District Public Prosecutor's Office (Debreceni Városi Ügyészség) dismissed the applicant's complaint about the termination of the investigation. This decision was served upon the applicant on 24 March 1994. The District Public Prosecutor's Office stated that no further complaint could be brought against its decision.

On 28 April 1994 the Hajdú-Bihar County Public Prosecutor's Office (Hajdú-Bihar Megyei Foügyészség) rejected the applicant's further complaint. The County Public Prosecutor's Office informed the applicant that the prosecution authorities would not deal with any further complaint of his, unless he would disclose relevant new facts.

In its letter of 16 September 1994 the Attorney General's Office (Legfobb Ügyészség), in response to the applicant's further complaint, informed his lawyer that there had been no legal ground to quash the decisions about the discontinuation of the investigations against Police Officer N.

B. Relevant domestic law and practice

S. 52 of the Constitution provides that the Attorney General of Hungary shall be elected by the National Assembly upon nomination by the President of the Republic and that he shall be responsible to the National Assembly and shall submit reports on his activities.

S. 6 (1) of Act No. V of 1972 on Prosecution, as amended several times, states that the public prosecutors are subordinated to the Attorney General and they can be given orders only by the Attorney General and the hierarchically superior public prosecutor. S. 20 (5) provides that the public prosecution is independent, it is subject to the acts of Parliament and other legal rules. S. 25 (1) states that the public prosecutor shall examine without delay any complaints lodged with the public prosecutor's office, take the necessary measures in case of breaches of the law and inform the complainant of how the complaint was disposed of.

The relevant parts of S. 148 of the Code on Criminal Procedure, under the heading "Remedy during investigation", provide that anybody aggrieved by the authority's decision, measure or omission, is entitled to bring a complaint. If the authority itself does not admit the complaint, it shall transfer the case-file and its own statement about the complaint to the competent public prosecutor within 24 hours. The

public prosecutor shall decide upon the complaint within 8 days.

S. 339 (1) of Act No. IV of 1959 on the Civil Code, as amended several times, provides that anybody unlawfully causing damages to another person shall pay compensation for the loss. S. 349 of the Civil Code, regulating the responsibility of persons acting in an official capacity, provides that liability for damages caused in the sphere of public administration can only be established, if they could not be prevented by ordinary legal remedies to overcome the grievances. In its decision No. Pf.I.20.128/1992, the Supreme Court held that an inappropriate action taken by a policeman can serve as a basis for liability according to S. 349 of the Civil Code. The decisions of the Supreme Court are as a rule respected by inferior courts.

Rule 85 of the Regulations of the Police Service (Order of the Minister of the Interior No. 1/1990. /I.1./ BM) provides that, in case of breach of, or danger to, the public order and safety, the policeman is empowered and, at the same time, is obliged to act. The policeman is empowered and obliged to act, even if he is not on duty, in cases when there is no policeman on duty around or when a policeman on duty needs assistance in implementing an action.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was exposed to ill-treatment during his arrest and police custody.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 January 1995 and registered on 14 March 1995.

On 29 November 1995 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 14 February 1996.

On 10 April 1996 the applicant's representative submitted observations in reply to the respondent Government's observations.

On 30 August 1996 the Government submitted supplementary observations, to which the applicant did not reply.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention that during his arrest and custody he was ill-treated by the police.

Article 3 (Art. 3) provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The Government maintain that the applicant has failed to exhaust domestic remedies at his disposal under Hungarian law. They submit in particular that the applicant did not file an official liability action under SS. 339 and 349 of the Hungarian Civil Code.

Moreover, he has failed to comply with the six months' time-limit under Article 26 (Art. 26) of the Convention. They submit in particular that in the present case the final decision was given by the Debrecen District Public Prosecutor's Office on 18 March 1994, when it dismissed the applicant's complaint about the termination of the investigation. There were no further remedies available against this decision and the applicant's subsequent complaints, lodged with higher prosecution authorities, cannot be regarded as effective remedies.

Furthermore, the Government contest the applicant's allegations of ill-treatment.

The applicant submits that, having regard to their civil nature, in the context of official liability proceedings it cannot be established that a criminal offence was committed against him. Moreover, the final decision in his case was given by the Attorney General's Office and was delivered upon him on 22 September 1994. His application has, therefore, been lodged in time. He maintains that he addressed the Attorney General's Office as it could have quashed the earlier decisions about the discontinuation of the investigations.

Under Article 26 (Art. 26) of the Convention, the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

As regards the Government's objection as to the exhaustion of domestic remedies, the Commission recalls that, in relation to treatment contrary to Article 3 (Art. 3) of the Convention, raising criminal charges against the officials concerned or, in the alternative, filing a civil action for compensation are generally effective remedies to be exhausted pursuant to Article 26 (Art. 26) (cf., Nos. 5577-5583/72, Dec. 15.12.75, D.R. 4, p. 4; No. 19092/91, Dec. 11.10.93, D.R. 75, p. 207; No. 11208/84, Dec. 4.3.86, D.R. 46, p. 182). The Commission considers that the applicant, by initiating criminal proceedings against Police Officer N., had recourse to an effective remedy for the purposes of Article 26 (Art. 26) of the Convention.

As regards the question whether the application has been lodged within the six months' time-limit, the Commission recalls that the six months' period runs from the date of the final domestic decision after effective and sufficient domestic remedies have been used (No. 12945/87, Dec. 4.4.90, D.R. 65, p. 173). An extraordinary remedy dependent on the discretionary power of a public authority cannot be considered as an effective remedy (No. 14545/89, Dec. 9.10.90, D.R. 66, p. 238).

In the present case, the Commission notes that the applicant brought a complaint against the decision of the Debrecen Prosecution's Department of Investigation, dated 15 February 1994, by which decision the investigation against Police Officer N. had been terminated. On 18 March 1994 the Debrecen District Public Prosecutor's Office dismissed his complaint, stating that no further complaint could be brought against its decision. Thereupon the applicant lodged further complaints with the County Public Prosecutor's Office and the Attorney General's Office, in response to which he was informed that there had been no ground for the amendment of the final decision and any potential continuation of the investigation was subject to the disclosure of new relevant facts.

The Commission, having regard to the relevant provisions of domestic law, finds that the final decision in the case was given by the Debrecen District Public Prosecutor's Office. No remedy was available against this decision and the applicant was informed accordingly. The applicant's ensuing petitions with the County Public Prosecutor's Office and the Attorney General's Office were no effective remedies for the purposes of the Convention. He was merely informed that the prosecution authorities could not deal with his further complaints, unless he submitted new relevant information. This action did not interrupt the running of the period of six months under

Article 26 (Art. 26) of the Convention.

Consequently, the Commission considers that the final decision in the case was given on 18 March 1994, when the Debrecen District Public Prosecutor's Office dismissed the applicant's complaint against the termination of the investigation. The applicant, however, introduced his complaint only on 16 January 1995, i. e. after the six months' time-limit had expired.

It follows that the application has been lodged out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber