AS TO THE ADMISSIBILITY OF

Application No. 28453/95
by Gábor BUSA
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 15 January 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

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 14 February 1995 by Gábor BUSA against Hungary and registered on 5 September 1995 under file No. 28453/95;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1946, is a Hungarian national. He resides in Géderlak, Hungary. He receives a disability pension.

The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

1. On 23 October 1993 Mr. I. T., the former companion of the applicant's wife, reported to the Paks Police Department (Paksi Rendorkapitányság) that the applicant possessed some unlicensed weapons.

Subsequently, still on 23 October 1993, a police squad of eleven persons forcibly caught the applicant in front of his home and immobilised him for a few minutes. This action caused the applicant some injuries on the face. Shortly afterwards the police officer in charge of the squad informed the applicant that they were in search of an armed deserter, namely Mr. J. T. - the nephew of Mr. I. T. -, and that it had been reported to the police that the deserter might have been hiding in the applicant's home. In the police's opinion, it was necessary to immobilise the applicant in order to prevent him from alerting the deserter, if the deserter was in fact hiding in the applicant's home. The police squad subsequently searched the applicant's home, without presenting a search warrant. The search, did

not reveal either the deserter or the weapons allegedly possessed by the applicant.

According to a medical report dated 23 October 1993, the applicant suffered several abrasions and haematomas on his face, which were to heal within eight days.

On 24 October 1993 the applicant lodged a complaint with the Investigation Office of the Szeged Prosecution (Szegedi Ügyészségi Nyomozó Hivatal), referring to the allegedly unlawful police action and to the minor bodily assault he had suffered. He also unsuccessfully initiated criminal proceedings against Mr. I. T., charging him with false accusation.

On 15 November 1993 the Investigation Office transferred the applicant's complaint to the Kalocsa District Court (Kalocsai Városi Bíróság). The Investigation Office confirmed the circumstances of the impugned police action, as they had been presented by the applicant. It found, however, that the police action did not qualify as an abuse of official power (hivatali visszaélés buntette) within the meaning of Section 225 of the Hungarian Criminal Code (a Bünteto Törvénykönyvrol szóló 1978. évi IV. törvény). The Office also held that the applicant, acting as private prosecutor, should pursue his complaint, as to the minor bodily assault which he had suffered, before the Kalocsa District Court. Moreover, the Office stated that it would initiate disciplinary proceedings before the Head of the Bács-Kiskun County Police Department (Bács-Kiskun Megyei Rendorfokapitányság Vezetoje), having regard to the apparent shortcomings in the preparation of the police action in question and to the police's failure to take account of the hostile relations between the applicant and Mr. I. T., when launching their intervention.

On 29 November 1993 the applicant lodged a complaint against the decision of 15 November 1993 with the Csongrád County Public Prosecutor's Office (Csongrád Megyei Foügyészség).

On 6 December 1993 the Public Prosecutor's Office dismissed his complaint, finding that the information of the police about the whereabouts of the deserter in question had lawfully warranted the impugned police action. The Prosecutor's Office informed the applicant that he could claim compensation from the Head of the Bács-Kiskun County Police Department. In December 1993 the applicant claimed compensation from the Head of the Bács-Kiskun County Police Department.

On 11 January 1994 the Kalocsa District Court discontinued the applicant's private prosecution against the policemen in question. The Court held that, since the policemen had not deliberately injured the applicant during their action, their behaviour did not qualify as the offence of bodily assault within the meaning of Section 170 (1) of the Criminal Code.

On 18 February 1994 the Attorney General's Office (Legfobb Ügyészség Nyomozás Felügyeleti Foosztály) dismissed the applicant's complaint against the decision of 6 December 1993.

On 8 March 1994 the Bács-Kiskun County Regional Court (Bács-Kiskun Megyei Bíróság) quashed the decision of the Kalocsa District Court, dated 11 January 1994, and sent back the case to the Investigation Office of the Szeged Prosecution, with a view to the applicant's complaint being investigated as a charge of ill-treatment in official proceedings (bántalmazás hivatalos eljárásban) within the meaning of Section 226 of the Criminal Code.

On 9 March 1994, upon the applicant's complaint, the Ministry of the Interior (Belügyminisztérium) informed the applicant that no criminal liability on the part of the police arose in the case, whereas the envisaged disciplinary proceedings were still subject to the

findings of the Investigation Office's investigation. The Ministry, apologising for the incident, also stated that the actual damages, caused by the police intervention to the applicant, had meanwhile been compensated for by the Bács-Kiskun County Police Department. The applicant states that the amount of compensation (HUF 5,167) covered only a fraction of the damage.

On 24 June 1994 the Csongrád County Public Prosecutor's Office informed the applicant that on 8 June 1994 the Deputy of the County Chief Prosecutor (megyei foügyészhelyettes) had instructed the Investigation Office to carry out the investigation in question.

In its decision of 1 August 1994 the Investigation Office found that the use of force against the applicant by the police squad had been contrary to the relevant provisions of the Police Service Regulations (Rendorségi Szolgálati Szabályzat) and might have given rise to disciplinary liability within the police. However, the policemen had not committed the offence of ill-treatment in official proceedings, since they had not deliberately ill-treated the applicant. Moreover, having regard to the applicant's complaint about the light bodily assault he had suffered, the Office sent the case back to the Kalocsa District Court for further action.

On 6 October 1994 the Kalocsa District Court discontinued the criminal proceedings, which had been initiated upon the Investigation Office's decision of 1 August 1994. The District Court found that the applicant, upon notification, failed to specify the persons to be charged with the minor bodily assault against him.

On 25 October 1994 the Bács-Kiskun County Regional Court, upon the applicant's appeal, quashed this decision and sent the case back to the District Court.

On 21 November 1994, in the resumed proceedings, the District Court ordered the Kalocsa Police Department (Kalocsai Rendor-kapitányság) to carry out an investigation in the case with a view to the identification of the members of the police squad.

On 20 January 1995 the Kalocsa Police Department discontinued the investigation on the ground that it was impossible to identify the policemen involved in the event concerned. On 22 June 1995 the Kalocsa District Public Prosecutor's Office (Kalocsai Városi Ügyészség) dismissed the applicant's complaint. The applicant's further complaints with the Ministry of Justice (Igazságügyi Minisztérium) and the Office of the Prime Minister (Miniszterelnöki Hivatal) were to no avail.

2. On 22 June 1994 the applicant brought an official liability action before the Kalocsa District Court against the Ministry of the Interior, claiming an additional HUF 650,000 as compensation for actual material damages and HUF 24,000,000 as compensation for moral damages, namely his constant anxiety allegedly due to the incident. The proceedings were subsequently transferred to the Bács-Kiskun County Regional Court for the reasons of competence.

On 14 November 1994 the Regional Court held a hearing.

On 3 March 1995 the Regional Court dismissed the applicant's request for legal aid (pártfogó ügyvéd kirendelése) on the ground that the requirements under Section 84 of the Hungarian Code on Civil Procedure (a polgári perrendtartásról szóló 1952. évi III. törvény) were not met.

On 12 April, 29 May and 18 September 1995 the Regional Court held further hearings.

On 11 April 1996 the Regional Court awarded a compensation of HUF 200,000 to the applicant, increased by interest of 20% p.a. as from

23 October 1993, and dismissed the remainder of his claims. In its decision, the Regional Court relied on, inter alia, Sections 339 to 354 of the Hungarian Civil Code (a Magyar Köztársaság Polgári Törvénykönyvérol szóló 1959. évi IV. törvény), concerning matters of compensation liability. In the reasoning of its decision the Regional Court established that, although the members of the police squad had been properly instructed how to carry out the envisaged intervention, they had executed their action without having warned the applicant of the possibility of use of force. Due to their action, the applicant had suffered some injuries which healed within eight days. His subsequent motions to institute criminal proceedings against the members of the police squad had eventually remained unsuccessful. The Regional Court found that the police action in question had contravened the relevant police regulations and the principles of the Hungarian Constitution, the more, since the use of force by the police had been unjustified in the circumstances of the case. The forcible police action, and the search of the applicant's home without the production of a search warrant gave rise to compensation liability on the part of the Ministry of the Interior. As to the amount of the compensation payable, the Court found, on the one hand, that the applicant had failed to substantiate his claims to the extent that they concerned his alleged material damages. Relying on expert psychological evidence, the Court considered, on the other hand, that the deterioration in his mental health, namely, the consequences of the psychological "shock" caused by the incident and the emotional burden of the subsequent series of criminal proceedings, could be compensated for by the awarded sum.

The applicant's appeal concerning the amount of compensation is pending before the Supreme Court.

S. 253 (3) of the Hungarian Code of Civil Procedure (a polgári perrendtartásról szóló 1952. évi III. törvény) provides that [in the appeal proceedings] the second instance court may amend the decision of the first instance court only within the limits of the appeal claims.

3. In 1993 Mr. I. T. brought an action before the Kalocsa District Court requesting that the right of custody over his two children, who were living with the applicant and his wife, be transferred to him.

On 23 September 1994 the District Court dismissed Mr. I. T.'s action and required him to pay child maintenance as from 1 January 1993. The decision, to the extent it concerned child maintenance, was declared enforceable. On 14 June 1995 the Bács-Kiskun County Regional Court confirmed the decision. The subsequent motions to enforce the payment of the child maintenance were apparently unsuccessful.

In 1995 the applicant's wife applied to the District Court for an order for advance payment of the child maintenance. On 18 April 1996 the District Court dismissed her request on the ground that the requirements for such an advance payment were not met. The appeal of the applicant's wife is pending before the Regional Court.

COMPLAINTS

1. The applicant complains under Article 3 about the allegedly inhuman and degrading manner of the police action in question. He further complains that the police action amounted to a violation of his right to liberty and personal freedom, as enshrined under Article 5. Furthermore, he submits under Article 8 that the police action amounted to an interference with his private life, which was not justified in any manner, as the police took its action erroneously. In respect of his complaints under Articles 5 and 8, he also invokes Article 18. He also complains under Article 13 that the Hungarian authorities did not properly pursue the investigation against the policemen involved.

2. The applicant alleges that the length of the compensation proceedings has exceeded a reasonable time within the meaning of Article 6 para. 1.

3. The applicant complains under Article 6 para. 3 that no legal aid was granted to him in the compensation proceedings.

4. Finally, without invoking any particular provision of the Convention, the applicant complains about the Hungarian authorities' failure to arrange for the actual payment of the child maintenance due to his wife.

THE LAW

1. The applicant complains under Article 3 (Art. 3) about the allegedly inhuman and degrading manner of the police action in question. He further complains that the police action amounted to a violation of his right to liberty and personal freedom, as enshrined under Article 5 (Art. 5). Furthermore, he submits under Article 8 (Art. 8) that the police action amounted to an interference with his private life, which was not justified in any manner, as the police took its action erroneously. In respect of his complaints under Articles 5 and 8 (Art. 5, 8), he also invokes Article 18 (Art. 18). He also complains under Article 13 (Art. 13) that the Hungarian authorities did not properly pursue the investigation against the policemen involved.

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

Article 5 (Art. 5) of the Convention safeguards the "right to liberty and security of person".

Article 8 (Art. 8) of the Convention guarantees, inter alia, the right to respect for one's private life.

The question arises whether the applicant can be regarded as a victim for the purposes of Article 25 (Art. 25) of the Convention.

The Commission recalls that the word "victim", in the context of Article 25 (Art. 25), denotes the person directly affected by the act or omission which is in issue, the existence of a violation being conceivable even in the absence of prejudice (cf., inter alia, Eur. Court HR, Adolf v. Austria judgment of 26 March 1982, Series A no. 49, p. 17, para. 37).

However, the fact that the national authorities have acknowledged, and then afforded redress for, the breach of the Convention, may warrant the reconsideration of the applicant's status as a victim within the meaning of Article 25 (Art. 25). In such circumstances, to duplicate the domestic process with proceedings before the Commission and the Court would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention. The Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (cf., Eur. Court HR, Belgian Linguistic case, judgment of 23 July 1968, Series A no. 6, p. 35, in fine, and Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 22, para. 48). Accordingly, it has to be ascertained whether the Hungarian authorities held that the applicant had been a victim of the erroneous police action in question and, if so, whether they granted redress (cf., mutatis mutandis, Eur. Court HR, Eckle v. Germany judgment of 15 July 1982, Series A no. 51, pp. 30-31, paras. 66-67).

The Commission finds that on 9 March 1994 the Ministry of the Interior apologised for the incident, confirming that the actual damages caused by the police had been compensated for by the Bács-

Kiskun County Police Department. Moreover, in its decision of 1 August 1994, the Investigation Office of the Szeged Prosecution found that the use of force against the applicant had been contrary to the relevant provisions of the Police Service Regulations. Furthermore, in its decision of 11 April 1996, the Bács-Kiskun County Regional Court admitted in substance that the impugned police action had resulted a violation of the applicant's rights under Hungarian law and that this violation had warranted compensation under the Civil Code. The Regional Court awarded the applicant a compensation of HUF 200,000, increased by interest of 20% p.a. as from 23 October 1993.

In these circumstances, the Commission considers that the applicant can no longer claim to be a victim within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention.

2. The applicant alleges that the length of the compensation proceedings has exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1).

Article 6 para. 1 (Art. 6-1) of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations ... , everyone is entitled to a fair and public hearing within a reasonable time ..."

The applicant complains about the length of compensation proceedings which started on 22 June 1994, when he brought an action before the Kalocsa District Court.

The Commission notes that the Bács-Kiskun County Regional Court took the first instance decision in the case on 11 April 1996. The applicant's appeal is pending before the Supreme Court.

The Commission finds that the proceedings in question have lasted so far for about two years and four months.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case, namely, complexity, the conduct of the applicant and the conduct of the judicial authorities. In this instance the circumstances call for an overall assessment (cf., Eur. Court HR, Ficara v. Italy judgment of 19 February 1991, Series A no. 196-A, p. 9, para. 17).

The Commission notes that the proceedings complained of related to compensation claimed in the context of an erroneous police action and involved several hearings as well as the taking of expert psychological evidence. There is no indication of any significant delays on the part of the Hungarian courts.

Although the applicant's case has so far been dealt with by only one court instance, the total length of the proceedings does not exceed an acceptable limit in the circumstances of the present case (cf., mutatis mutandis, Eur. Court HR, Cesarini v. Italy judgment of 12 October 1992, Series A no. 245, p. 26, para. 20).

Consequently the applicant's complaint about the length of proceedings does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 6 para. 3 (Art. 6-3) that no legal aid was granted to him in the compensation proceedings.

Article 6 para. 3 (Art. 6-3) of the Convention, so far as it can be understood to be invoked by the applicant, provides as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
> ...
> c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

The Commission notes that on 3 March 1995 the Bács-Kiskun County Regional Court, in the compensation proceedings, dismissed the applicant's request for free legal aid on the ground that the requirements under S. 84 of the Hungarian Code of Civil Procedure were not met.

The Commission recalls that "the Convention's only express provision on free legal aid is Article 6 para. 3 (c) (Art. 6-3-c) which relates to criminal proceedings and is itself subject to limitations; what is more, according to the Commission's established case-law, Article 6 para. 1 (Art. 6-1) does not guarantee any right to free legal aid as such." (Eur. Court HR, Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 14, para. 26).

Nevertheless, Article 6 para. 1 (Art. 6-1) of the Convention guarantees that in the determination of his civil rights and obligations everyone is entitled to a fair hearing. The question could be raised, therefore, whether the denial of free legal aid did prevent the applicant from the enjoyment of this right (cf., Nos. 7823/77 - 7824/77, Dec. 6.7.77, D.R. 11, p. 221). In this respect the Commission recalls that the task of the judge in proceedings to which Article 6 para. 1 (Art. 6-1) applies includes the ultimate responsibility for ensuring the fairness of the proceedings, whether or not the parties are represented, and this safeguarding principle is especially relevant in contested proceedings where one of the parties appears in person. It follows that the Commission's examination of the fairness of the proceedings must be based upon their entirety and not on the isolated question of whether the applicant was granted legal aid (cf., e.g., No. 9353/81, Dec. 11.5.83, D.R. 33, p. 141).

In the present case, the Commission finds that the applicant has failed to show that the denial of free legal aid in the compensation proceedings affected in any manner the fairness of the proceedings.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant, without invoking any particular provision of the Convention, also complains about the Hungarian authorities' failure to arrange for the actual payment of the child maintenance due to his wife.

The Commission notes that on 18 April 1996 the Kalocsa District Court dismissed the request of the applicant's wife that an advance payment of child maintenance be awarded to her. Her appeal is pending before the Bács-Kiskun County Regional Court.

It follows that this part of the application is premature 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