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

FOURTH SECTION

DECISION

Application no. 77062/13
PAX PANNONIAE KFT
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 10 October 2017 as a Committee composed of:

Faris Vehabović, *President,*
Carlo Ranzoni,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 December 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Pax Pannoniae Kft, is a Hungarian property management company, established and owned by the World Federation of Hungarians (*Magyarok Világszövetsége*). It was represented before the Court by Mr T.-L. Leh, a lawyer practising in Paris.

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

3. In 2008, X, the executive manager of the applicant company, let a room within the premises of the Federation for the purposes of a movie projection. As it turned out, the movie to be projected was *Jud Süß*, a Nazi propaganda film from 1940 with anti-Semitic undertones.

4. The president of the World Federation of Hungarians cancelled the rental prior to the projection and dismissed X with immediate effect. The reason of the dismissal was that X had failed to fulfil his obligation to obtain the Federation's prior approval for letting its premises for the

purposes of an event of political nature. The Federation considered it obvious that the projection of the movie in question was in itself a political event, rather than a simple screening of a film.

5. The projection was later held at another scene (not belonging to the Federation) and was attended by several far-right sympathisers. Apparently, the execution of the movie's protagonist triggered loud applause among the audience.

6. X brought labour action against the applicant company, claiming unlawful dismissal.

7. The Budapest Labour Court and the Budapest High Court, after having heard a number of witness statements, found for X both on first and second instance, respectively. The applicant company was ordered to pay X 4,041,600 Hungarian forints (approximately 13,500 euros) in outstanding salary, severance pay and legal costs. The *Kúria* confirmed the final judgment on 5 June 2013.

8. In the courts' view, the applicant company failed to prove that X had violated his obligation to request prior approval for political events intentionally or, at least, with gross negligence. The courts took into account that the applicant company had employed also an artistic director with responsibility for the organisation of the applicant's cultural programme and that the renter had approached X allegedly having the prior approval of the artistic director on the film to be projected. It was the rental price and the planned date and duration of the projection that had been decided by X. According to the courts, in those circumstances, X's fault in misjudging the nature of the event (whether it was to be considered an ordinary movie projection or a political happening) could not be considered as a severe breach of duty warranting his culpability and immediate dismissal.

COMPLAINTS

9. The applicant company complained under Article 6 of the Convention about the outcome of the domestic proceedings.

10. In substance, it also complained about a breach of its 'negative' freedom of expression, in so far as the exercise of the applicant's right to refuse the projection of a Nazi propaganda movie and to apply labour law sanctions in connection to that was judged unlawful by the domestic courts. In this connection, the applicant company relied on Article 14 of the Convention, arguing that the movie was a vehicle for anti-Semitic discrimination.

THE LAW

A. Complaint under Article 6 of the Convention

11. The applicant company considers that the domestic labour-law proceedings were unfair. It invokes Article 6 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

12. As regards the applicant's complaint under Article 6 of the Convention, the Court reiterates that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *inter alia*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004−I). Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to review. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

13. The Court notes that the applicant's complaint concerning the outcome of the domestic labour-law proceedings is essentially of a fourth-instance nature. For the Court, there is nothing in the case file that would suggest that the findings of the domestic courts, based on an analysis of all the relevant circumstances and several witness statements, were arbitrary or manifestly unreasonable.

14. Accordingly, the Court finds that the proceedings at issue do not disclose any appearance of a violation of Article 6 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint concerning the applicant company's negative freedom of expression

15. Invoking Article 14 of the Convention, the applicant company complained about a breach of its 'negative' freedom of expression.

16. Master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of*

Judgments and Decisions 1998-I), the Court considers that this complaint should be examined under Article 10 of the Convention, which 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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 national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

17. The Court notes that, in the domestic proceedings, the applicant company did not allege a violation of its freedom of expression. The Court further observes that the owner of the applicant company, the World Federation of Hungarians, could prevent the screening of the film in its premises (see paragraph 4 above). Moreover, there is no indication that in the public opinion the (eventually cancelled) rental of the room was considered as a political position-taking, let alone an expression of anti-Semitic opinion, on the side of the Federation or the applicant company.

18. In those circumstances, and even assuming exhaustion of domestic remedies, the Court is of the view that the final judgment of the domestic courts had not interfered with the applicant company's freedom of expression. The Court considers in particular that the domestic courts did not call into question the decision of the applicant company's owner to cancel the screening, nor did they prevent the applicant company from drawing labour-law conclusions (for instance, an ordinary dismissal) from X's behaviour allegedly prejudicial on the applicant company's reputation. The only legal question adjudicated by the domestic courts was the lawfulness of the X's dismissal with immediate effect. The fact this particular sanction had been held to be contrary to domestic law did not directly affect the applicant company's right not to be associated with what it considered to be a vehicle for anti-Semitic propaganda.

19. In the light of the foregoing, the Court considers that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a), and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 November 2017.

Andrea Tamietti
Deputy Registrar

Faris Vehabović
President