AS TO THE ADMISSIBILITY OF

Application No. 31506/96
by Istvánné RÉKÁSI
against Hungary

The European Commission of Human Rights sitting in private on 25 November 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H. DANELIUS
F. MARTINEZ
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

Mr. M. de SALVIA, Deputy Secretary to the Commission

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

Having regard to the application introduced on 8 March 1996 by Istvánné RÉKÁSI against Hungary and registered on 16 May 1996 under file No. 31506/96;

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, a Hungarian citizen residing in Budapest, was born in 1938 and is a pensioner.

A. Particular circumstances of the case

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

On 9 June 1994 the Budapest II District Municipality (Budapest II. kerületi Önkormányzat Polgármesteri Hivatal Szabálysértési Iroda), acting as the first instance dealing with "regulatory" offences (elso fokú szabálysértési hatóság), found that, in a street quarrel, the applicant had addressed Mrs. H. with rude expressions, such as "you shitty leprotic gypsy whore, you stupid goose". In the reasoning of its decision, the Municipality relied on witness evidence. The Municipality held that the behaviour of the applicant amounted to the offence of libel, as defined under S. 96/B (1) of Act No. I of 1968 on "Regulatory" Offences (a szabálysértésekrol szóló 1968. évi I. törvény; the "Regulatory Offences Act 1968"). The Municipality imposed a fine of 6,000 Hungarian forints (HUF) on the applicant.

S. 96/B (1) of the Regulatory Offences Act 1968 provides that anyone, who addresses defamatory phrases to another person or commits any other similar action, shall be punished with a fine not exceeding HUF 10,000.

In these and the subsequent proceedings the applicant was represented by counsel.

On 17 November 1994 the Budapest Deputy of the Republic (Köztársasági Megbízott Hivatala), upon the applicant's appeal, quashed the decision of 9 June 1994 on the ground of shortcomings in the taking of evidence.

On 6 December 1995, in the resumed proceedings, the Municipality, following several hearings, found again that the applicant had committed the offence of libel and imposed a fine of HUF 5,000. In the reasoning of its decision, the Municipality relied on evidence given by several witnesses. The Municipality also ordered that, in default of payment, the fine be converted into imprisonment of five days.

On 14 February 1996 the Budapest Administrative Office (Budapest Főváros Közigazgatási Hivatala) dismissed the applicant's appeal. Her complaint to the Ministry of the Interior (Belügyminisztérium) was to no avail. On 2 July 1996, in response to her further complaint, the Budapest Public Prosecutor's Office (Fővárosi Foügyészség) informed her that it had found the proceedings in question in conformity with the relevant legislation and that there was no ground for the review of the decisions in question. Her further complaint is pending before the Attorney General's Office (Legfobb Ügyészség).

Meanwhile, the applicant had accused Mrs. H. of false accusation before the Investigation Office of the Budapest Prosecution (Budapesti Ügyészségi Nyomozó Hivatal). On 10 November 1995 the Investigation Office refused to carry out investigations into her accusations. On 29 April 1996, following her complaint, the Budapest Public Prosecutor's Office ordered the Investigation Office to investigate the matter. On 9 May 1996 the Investigation Office discontinued the investigations, finding that there was no suspicion of crime in the case. On 6 June 1996 the Budapest Public Prosecutor's Office dismissed the applicant's complaint. Her further complaint is still pending before the Attorney General's Office.

Furthermore, apparently in July 1996 the Investigation Office of the Fejér County Prosecution (Fejér Megyei Ügyészségi Nyomozó Hivatal) refused to carry out investigations into the applicant's charges of false accusation, brought against Mrs. H. On 5 August 1996 the Fejér County Public Prosecutor's Office (Fejér Megyei Foügyészség) dismissed the applicant's complaint.

B. The Hungarian reservation

Hungary's reservation, contained in the instrument of ratification deposited on 5 November 1992, is worded as follows:

"In accordance with Article 64 of the Convention, the Republic of Hungary makes the following reservation in respect of the right to access to courts guaranteed by Article 6, paragraph 1 of the Convention:

For the time being in proceedings for regulatory offences before the administrative authorities, Hungary cannot guarantee the right to access to courts, because the current Hungarian laws do not provide such right, the decision of the administrative authorities being final.

The relevant provisions of the Hungarian law referred to above are:

- Section 4 of Act No. IV of 1972 on courts, modified several times, which provides that the courts, unless an Act stipulates otherwise, may review the legality of the decisions taken by the administrative authorities;

- An exception is contained in Section 71/A of Act No. I of 1968 on proceedings for regulatory offences, modified several times, which allows for the offender to request judicial review solely against the measures taken by the administrative authority to commute to confinements the fine the offender had been sentenced to pay; no other access to court against final decisions taken in proceedings for regulatory offences is permitted."

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about the fine imposed upon her by the Budapest II District Municipality on 6 December 1995, as confirmed by the Budapest Administrative Office on 14 February 1996, and about the alleged unfairness of the "regulatory" offence proceedings conducted against her on charges of libel.

2. The applicant also submits under Article 10 of the Convention that the fine imposed upon her in the "regulatory" offence proceedings amounted to a breach of her right to freedom of expression.

3. Furthermore, the applicant complains under Article 6 of the Convention that the Hungarian authorities unfairly failed to carry out investigations against Mrs. H. upon her accusations.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention about the fine imposed upon her by the Budapest II District Municipality on 6 December 1995, as confirmed by the Budapest Administrative Office on 14 February 1996, and about the alleged unfairness of the "regulatory" offence proceedings conducted against her on charges of libel.

a. Article 6 (Art. 6) of the Convention, so far as it is relevant, provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

As regards the applicability of Article 6 (Art. 6) to the "regulatory" offence proceedings, the Commission, having regard to the criteria established in the case-law of the Convention organs (Eur. Court HR, Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, pp. 18-20, paras. 50-53; Lutz v. Germany judgment of 25 August

1987, Series A no. 123, pp. 22-24, paras. 51-57), notes that the proceedings in question fell within the scope of "regulatory" offence law according to the Hungarian legislation. However, the nature of the offence and the nature and the degree of severity of the penalty incurred might warrant classifying the offence with which the applicant was charged as a criminal one under the Convention. In this respect, the Commission notes in particular that the offence of libel potentially affects the whole population and, in the legal system of other member States, is regarded as a criminal offence. As regards the further criterion, the Commission notes that the fine could amount to HUF 10,000 and be converted into a term of imprisonment in certain circumstances. Article 6 (Art. 6) might, therefore, in principle apply to the present case.

Assuming the applicability of Article 6 (Art. 6), the applicant is entitled to bring the final decision given by the administrative authorities before a tribunal offering the guarantees of Article 6 (Art. 6). On the other hand, it is not required that the proceedings before the administrative authorities comply with Article 6 (Art. 6) (cf., Eur. Court HR, Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, p. 30, para. 68).

b. The question arises whether the applicant's lack of access to court is covered by the Hungarian reservation, made upon ratification of the Convention, according to which "for the time being in proceedings for regulatory offences before the administrative authorities, Hungary cannot guarantee the right to access to courts, because the current Hungarian laws do not provide such right, the decision of the administrative authorities being final."

The Commission has considered whether this reservation satisfies the requirements of Article 64 (Art. 64) of the Convention.

Article 64 (Art. 64) of the Convention reads as follows:

> "1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.
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> 2. Any reservation made under this Article shall contain a brief statement of the law concerned."

The Commission recalls that "by 'reservation of a general character' in Article 64 (Art. 64) is meant in particular a reservation couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope" (cf., Eur. Court HR, Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, p. 26, para. 55).

In this respect, the Commission notes that the Hungarian reservation refers to the lack of right to access to court, as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention, in proceedings for "regulatory" offences before the administrative authorities. It contains a statement on the applicable legislation, namely, that the proceedings under the scope of the Regulatory Offences Act 1968, having regard to S. 71/A thereof, constitute an exception to the general availability of court review of administrative decisions, as guaranteed by S. 4 of Act No. IV of 1972 on Courts.

In these circumstances, the Commission finds that the Hungarian reservation encompasses two laws which, taken together, constitute a well-defined and coherent body of substantive and procedural provisions. These provisions were all in force on 5 November 1992, when Hungary ratified the Convention (cf. Eur. Court HR, Chorherr v. Austria

judgment of 25 August 1993, Series A no. 266, p. 34, para. 18).

It follows that the wording of the reservation in question does not attain the degree of generality prohibited by Article 64 para. 1 (Art. 64-1) of the Convention.

Furthermore, the Commission recalls that the "brief statement of the law concerned" required by Article 64 para. 2 (Art. 64-2) of the Convention "both constitutes an evidential factor and contributes to legal certainty"; its purpose "is to provide a guarantee - in particular for the other Contracting Parties and the Convention institutions - that a reservation does not go beyond the provisions expressly excluded by the State concerned" (cf. Eur. Court HR, Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, pp. 27-28, para. 59; Weber v. Switzerland judgment of 22 May 1990, Series A no. 177, p. 19, para. 38). This does not, however, mean that it is necessary under Article 64 para. 2 (Art. 64-2) to provide a description, even a concise one, of the substance of the texts in question.

In the present case, the reference to the laws in question, accompanied by an indication of the subject-matter of the relevant provisions, makes it possible for everyone to identify the precise laws concerned and to obtain any information regarding them. It also provides a safeguard against any interpretation which would unduly extend the field of application of the reservation (cf. Eur. Court HR, Chorherr v. Austria judgment of 25 August 1993, Series A no. 266, pp. 34-35, para. 20; Gradinger v. Austria judgment of 23 October 1995, Series A 328-C, p. 65, para. 51).

Accordingly, that reservation complies with Article 64 para. 2 (Art. 64-2) of the Convention.

As the reservation is, therefore, in compliance with Article 64 (Art. 64) of the Convention and covers the applicant's lack of access to court, the Commission finds that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 10 (Art. 10) of the Convention that the fine imposed upon her in the "regulatory" offence proceedings amounted to a breach of her right to freedom of expression.

Article 10 (Art. 10) of the Convention, so far as it is relevant, 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. ...
>
> 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."

The Commission notes that the impugned measure, namely, the imposition of a "regulatory" fine as a punishment for the statements made by the applicant, was an interference with the applicant's exercise of her freedom of expression. The fact that, in a given case, that freedom is exercised other than in the discussion of matters of

public interest does not deprive it of the protection of Article 10 (Art. 10) (Eur. Court HR, Jacubowski v. Germany judgment of 23 June 1994, Series A no. 291-A, p. 13, para. 25). Such interference is in breach of Article 10 (Art. 10, unless it is justified under paragraph 2 of Article 10, i.e. it must be "prescribed by law", have an aim or aims that is or are legitimate under Article 10 para. 2 (Art. 10-2) and be "necessary in a democratic society".

The interference was "prescribed by law", namely, by the relevant provisions of the Regulatory Offences Act 1968. It also pursued a legitimate aim under the Convention, i.e. "the protection of the reputation or rights of others". It remains to be ascertained whether the interference can be regarded as having been "necessary in a democratic society".

The Commission recalls that the adjective "necessary" within the meaning of Article 10 para. 2 (Art. 10-2) implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether and to what extent an interference is necessary, but this margin goes hand in hand with a European supervision. Thus the measures taken at national level must be justifiable in principle and proportionate (cf. Eur. Court HR, Observer and Guardian v. the United Kingdom judgment of 26 November 1991, Series A no. 216, pp. 29-30, para. 59; Jacubowski v. Germany judgment, loc. cit., p. 14, para. 26).

In the present case, the requirements of protecting the reputation and rights of others, namely of Mrs. H., must be weighed against the applicant's freedom to inform third persons about her personal dislike of Mrs. H.

The Budapest II District Municipality found that, in a street quarrel, the applicant had addressed Mrs. H. with grossly rude expressions. The Commission finds that the Municipality took into account the nature of the applicant's statements and their capacity of damaging Mrs. H.'s personal integrity and reputation.

In these circumstances, there were relevant and sufficient reasons for the imposition of the fine upon the applicant. It cannot, therefore, be said that the Municipality, in its decision confirmed by the Budapest Administrative Office, overstepped the margin of appreciation left to the national authorities.

Accordingly, there is no appearance of a violation of the applicant's right under Article 10 (Art. 10) of the Convention.

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 (Art. 6) of the Convention that the Hungarian authorities unfairly failed to carry out investigations against Mrs. H. upon her accusations.

The Commission recalls that the Convention does not guarantee the right to pursue criminal proceedings against third persons (No. 10877/84, Dec. 16.5.85, D.R. 43, p. 185). Moreover, Article 6 (Art. 6) does not apply to proceedings aimed at instituting criminal proceedings against third persons.

Furthermore, the Commission has repeatedly stated that the right to enjoy a good reputation is a civil right. This line of case-law is derived from No. 808/60, Isop v. Austria, Dec. 8.3.62, Yearbook 5, p. 122, where the Commission held that "the right to enjoy a good reputation and the right to have determined before a tribunal the justification of attacks upon such reputation must be considered to be civil rights within the meaning of Article 6 para. 1 (Art. 6-1)". This

case-law has been confirmed by the Court (cf., e.g., Eur. Court HR, Minelli v. Switzerland judgment of 25 March 1983, Series A no. 62).

In the present case the Commission, whilst maintaining the general principle that the right to enjoy a good reputation constitutes a "civil right" within the meaning of the above provision, considers nevertheless that the proceedings chosen by the applicant to seek rehabilitation against Mrs. H.'s alleged false accusations against her, namely by way of the initiation of criminal proceedings, do not fall within the scope of Article 6 para. 1 (Art. 6-1) of the Convention. Unlike a civil action for making defamatory statements which could also have been brought by the applicant under Section 84 of the Hungarian Civil Code (Polgári Törvénykönyv), the purpose of the criminal proceedings in question is to punish the accused person concerned for having committed a criminal offence. However, the right of access to the courts which Article 6 para. 1 (Art. 6-1) of the Convention grants to anyone who seeks the determination of his civil rights does not include any right to bring criminal proceedings against a third person (cf., No. 7116/75, X. v. Germany, Dec. 4.10.76, D.R. 7, p. 92).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA Deputy Secretary to the Commission	S. TRECHSEL President of the Commission