AS TO THE ADMISSIBILITY OF

Application No. 21495/93
by József VÉN
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993 , the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 18 December 1992 by József VÉN against Hungary and registered on 10 March 1993 under file No. 21495/93;

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 is a Hungarian citizen, born in 1948.

The facts, as submitted by the applicant and which may be deduced from the documents lodged with the application, may be summarised as follows:

The applicant joined the fire-brigade in 1969. In the summer of 1991 he served as the deputy chief of the Fejér County Fire-Brigade (Fejér megyei Tüzoltóparancsnokság). His rank was that of lieutenant colonel.

On 24 June 1991 he was given the task by his chief to run in a new Renault Express car of the Fire-Brigade for its first 3.000 kilometers of use. During this running in the applicant and his wife used the car also for personal purposes.

On 5 August 1991 the applicant was denounced by someone to the National Headquarters of the Fire-Brigade (BM. Országos Tüzoltóparancsnokság).

On 16 September 1991 The National Commander instituted a disciplinary procedure against the applicant and his chief. The applicant was charged with the use of the car for his own personal purposes and with discrediting his office. During the proceedings the National Commander gave an interview to the press in which he stated, inter alia, that the applicant would be fired as this had been decided

by the Minister for Home Affairs.

The applicant claims that the rules of the disciplinary proceedings were violated several times. For example, after being informed about the facts of the alleged disciplinary offence under domestic law, the superior officer has 15 days to decide whether to institute a disciplinary procedure. In the present case the officer took 42 days. The applicant was not given the right to examine witnesses against him and also had no access to the documents of the proceedings. The disciplinary measure was also imposed more then 3 months after the institution of the procedure, contrary to the requirements of the Hungarian law.

On 18 October 1991 the applicant suffered a heart attack and became 50% disabled. As a consequence of the heart attack the disciplinary procedure was suspended for a while.

On 15 November 1991 the applicant lodged an application with the Constitutional Court (Magyar Köztársaság Alkotmánybirósága).

On 2 March 1992, as a disciplinary measure, the applicant was compulsorily retired by the Minister for Home Affairs. The decision also stipulated that the applicant would only receive a pension from the age of 55.

On 12 March 1992 the applicant amended his complaint lodged on 15 November 1991 with the Constitutional Court to take account of the Minister's decision.

Under domestic law the Constitutional Court may control whether legislation complies with the requirements of the Hungarian Constitution. The general constitutionality of such laws may be challenged by individuals, but the Constitutional Court may not intervene in an individual's dispute with the State over the application of laws in a specific case.

On 18 March 1992 the applicant lodged a complaint with the Deputy Attorney General (Legfőbb Ügyészhelyettes). He complained about procedural flaws in his disciplinary proceedings.

On 4 May 1992 the General Supervisory and Civil Law Department of the Attorney General`s Office (Legfőbb Ügyészség Általános Felügyeleti és Polgári Jogi Föosztály) informed him that although the disciplinary decision was procedurally flawed they found no ground to intervene.

On 8 December 1992 his complaint was rejected by the Constitutional Court. The Constitutional Court declared that the disciplinary rules referred to by the applicant were in compliance with the Constitution.

COMPLAINTS

The applicant complains about an alleged lack of a fair and public hearing, claiming that he had no right to challenge the Minister's disciplinary decision, and that there was also a lack of an impartial tribunal, contrary to Article 6 of the Convention. Under this Article he also complains about certain alleged violations of the domestic law and a lack of equality of arms. Finally, under Article 14 of the Convention, the applicant complains that as a civil servant and a fireman he was discriminated against.

THE LAW

The applicant complains of an unfair hearing and discrimination, contrary to Articles 6 and 14 (Art. 6, 14) of the Convention, in

relation to disciplinary proceedings against him.

The Commission notes that the disciplinary proceedings complained of resulted in a decision taken by the Minister for Home Affairs, dated 2 March 1992, i.e. before 5 November 1992, which is the date of the entry into force of the Convention with respect to Hungary.

It is true that the applicant lodged a complaint with the Constitutional Court, which was rejected after the ratification of the Convention, namely on 8 December 1992.

The question therefore arises whether the fact that the Constitutional Court took a decision in relation to this matter subsequent to the ratification following the applicant's constitutional appeal would nevertheless bring the matter within the Commission's competence ratione temporis.

In this respect the Commission notes that under Hungarian law the Constitutional Court is only entitled to control the constitutionality of laws in their generality and cannot quash or modify specific disciplinary measures taken against an individual by State officials. In the present case, therefore, the Constitutional Court had jurisdiction, theoretically, to declare unconstitutional and even quash the disciplinary rules governing the profession of fireman. However, it had no jurisdiction to quash the decision of the Minister of Home Affairs to compulsorily retire the applicant. The applicant's appeal to this court cannot, therefore, be considered an effective remedy according to the generally recognised rules of international law under Article 26 (Art. 26) of the Convention. Accordingly, the final effective decision in the present case is that of the Minister for Home Affairs on 2 March 1992.

The Commission recalls that according to the generally recognised principles of international law, for all Contracting Parties, the Convention governs only those facts which arose after it came into force in respect of the Party concerned. The applicant complains about a disciplinary procedure which effectively finished before the Convention`s entry into force in Hungary. It follows that the Commission is not competent, ratione temporis, to examine the disciplinary procedure (cf. mutatis mutandis No. 7775/77, Dec. 5.10.78, D.R. 15 p. 143 at p. 158).

The application is therefore incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

	Acting President
Secretary to the First Chamber	of the First Chamber
(M.F. BUQUICCHIO)	(F. ERMACORA)