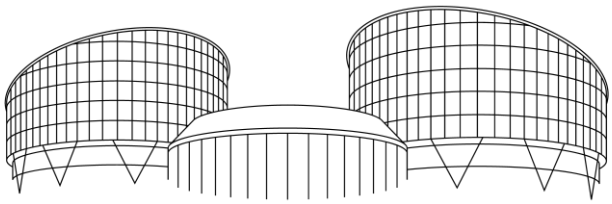

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

SECOND SECTION

CASE OF KARSAI v. HUNGARY

(Application no. 5380/07)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karsai v. Hungary**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Sally Dollé, *Section Registrar,*

Having deliberated in private on 10 November 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 5380/07) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr László Karsai ("the applicant"), on 27 December 2006.

2. The applicant was represented by Mr A. Kádár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that the Hungarian court decisions obliging him to pay compensation for statements made in an article had amounted to an infringement of his freedom of expression guaranteed by Article 10 of the Convention.

4. On 25 June 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Budapest.

6. The applicant is a historian and university professor. His main subject of research is the Second World War and, in particular, the extermination of Jews and Roma. He is the author of numerous publications on the subject.

7. In 2004 a heated public debate took place in Hungary as to whether a statue should be raised to commemorate Pál Teleki[1]. In a wider context, the debate also concerned the question of Hungary's failure to face up to its role in World War II and the Holocaust, as well as the attitude of Hungarians to this chapter of the country's twentieth-century history – issues which had political implications, given that certain right-wing parties in the country identified their roots in the pre-World-War-II political system, of which Pál Teleki was an emblematic figure.

8. In that context the applicant publicly stated that Teleki had been one of the most reprehensible figures of Hungarian history, responsible for substantial anti-Semitic legislation as well as for dragging Hungary into World War II.

9. In issue no. 11/2004 of the weekly paper *Élet és Irodalom*, the applicant published an article on this subject, criticising the right-wing media, including a certain Mr B.T., for embellishing Teleki's role and for making anti-Semitic statements in the process. The article presented examples of, and refuted, various misconceptions about Teleki's political acts, endorsed by right-wing authors in order to diminish his responsibility for the persecution of Hungarian Jews, which, in the applicant's view, amounted to "cautious Jew-bashing". One of these examples reads as follows:

> "In B.T.'s charming words, two anti-Semitic laws 'fell' within Teleki's two premierships. ... If we are counting, let us be accurate: not two, but 12 (twelve) anti-Semitic laws are linked to Teleki's name. ..."

The applicant also noted that:

> "... [I]t is rare that those supporting [the plan to erect a] statue of Teleki are trying to defend their position using overtly anti-Semitic arguments."

10. Mr B.T. brought an action against the applicant before the Budapest Regional Court. He claimed that his reputation had been tarnished by another passage in the applicant's article which read as follows:

> "In the Parliamentary Library's PRESSDOC database there are hundreds of articles and studies praising Pál Teleki, written in a sometimes uninhibited, sometimes more moderate style. In 1994-95, the extremely anti-Semitic and irredentist *Hunnia Brochures* devoted a 15-episode series to the ex-PM. The amateur historian [B.T.]

[1] Hungarian Prime Minister (1920 to 1921; 1939 to 1941). Under both his governments, various anti-Semitic laws were enacted. Under his second premiership, Hungary joined the Tripartite Pact. His government cooperated with Nazi Germany in the early stages of World War II.

> wrote several articles[1] extolling the virtues of Pál Teleki – the devout Catholic, the enthusiastic Scout leader – who in his view was an anti-Nazi '*Realpolitiker'*.
>
> These articles and studies prompted very little reaction. There are very few of us who, at least from time to time, pick up the products of the right-wing or extreme right-wing press, which, perhaps encouraged by this [indifference], keeps lying, keeps slandering, keeps stirring feeling against and bashing the Jews (*zsidóznak*), in an increasingly uninhibited way."

11. According to the plaintiff, the last sentence of the quotation could have been aimed at him and was prejudicial to his reputation.

12. On 1 June 2005 the Regional Court dismissed the action, holding in essence that the impugned sentence, especially the expression "bashing the Jews" did not concern the plaintiff himself but the right-wing and extreme right-wing media in general.

13. On 17 January 2006 the Budapest Court of Appeal reversed that decision on appeal and found for the plaintiff. Relying on sections 75, 78 and 84 of the Civil Code, it ordered the applicant to arrange for the publication of a rectification at his expense and to pay the legal costs, which amounted to 69,000 Hungarian forints (HUF)[2]. Assessing the applicant's statements in the context of the whole article, the Court of Appeal held that the impugned expression could be seen as relating to the plaintiff personally and that the applicant had failed to prove that it was true. In the court's opinion, to accuse the plaintiff, even contextually, of "Jew bashing" was a statement of fact that presented Mr B.T. in a false light and was thus capable of prejudicing his reputation.

14. On 28 June 2006 the Supreme Court upheld that decision, imposing another HUF 46,000[3] in legal fees. It reaffirmed that "the impugned statement – which was made, in general terms, with regard to the right-wing (extreme right-wing) press – could also be considered to concern the plaintiff".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

15. The applicant complained that the Hungarian court decisions amounted to a violation of his right to freedom of expression as provided for in Article 10 of the Convention, which, insofar as relevant, reads as follows:

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[1] This reference to Mr B.T.'s articles was accompanied by footnotes listing Mr B.T.'s publications about Pál Teleki in a large-circulation daily paper.

[2] 280 euros (EUR)

[3] EUR 180

> "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 ... for the protection of the reputation or rights of others, ..."

16. The Government contested that argument.

A. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there has been an interference

18. The Court notes that it has not been disputed by the Government that there was an interference with the applicant's right to freedom of expression. It reiterates that that an interference with the applicant's rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims.

2. "Prescribed by law"

19. The Court observes that the measure complained of was based on sections 75, 78 and 84 of the Civil Code. It is therefore satisfied that it was "prescribed by law". Moreover, this has not been disputed by the parties.

3. Legitimate aim

20. The applicant argued that – contrary to the findings of the second- and third-instance courts – the impugned statement could not be understood to have referred to the plaintiff and that, therefore, the interference did not pursue any legitimate aim. The Government did not address this point.

21. The Court considers that it is generally for the national courts to determine the facts bearing on the litigation, and finds no reason to depart from the Court of Appeal's and the Supreme Court's conclusion that the impugned statement was capable of affecting the plaintiff's reputation.

Consequently, it is satisfied that the interference pursued a legitimate aim, namely the protection of the reputation or rights of others.

4. Necessary in a democratic society

22. It remains to be determined whether the interference was "necessary in a democratic society".

a. The applicant's arguments

23. The applicant argued in essence that his statements were value judgments, not susceptible to proof, with sufficient factual basis. They were made in the press, in the course of a public debate on an issue of significant public interest, which had not been properly discussed before. In his view, freedom of debate on issues of significant public interest – as with political debate – was at the very core of the concept of a democratic society. The plaintiff was actively involved in a debate of public concern with strong political implications and he had laid himself open to scrutiny when entering that arena. In recent years, right-wing extremism had become stronger in Hungary, free debate over such questions had gained crucial importance, and in such discussions, strong criticism and harsher language should be accepted. In sum, it could not be argued that the measure was necessary in a democratic society; all the more so, since – although only civil-law sanctions had been ordered – the obligation to arrange for a public rectification was a disproportionately severe sanction for him, as his credibility as a historian was at stake.

b. The Government's arguments

24. The Government relied in substance on the Contracting States' margin of appreciation in the matter. They argued that the applicant's statement had exceeded the limits of freedom of expression as guaranteed by Article 10 of the Convention. They endorsed the domestic courts' arguments that the impugned statements had injured the plaintiff's reputation, and deliberately so. The Hungarian courts had duly balanced the applicant's Convention rights and the plaintiff's right to his good reputation, and had justifiably concluded that the latter outweighed the former in the particular circumstances of the case. They stressed that the sanctioning of statements capable of damaging a person's good reputation should not be regarded as a breach of the Convention. Lastly, in the Government's view, the sanction imposed had not been disproportionate, especially as it was of a civil rather than a criminal character.

c. The Court's assessment

i. General principles

25. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

26. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their margin of appreciation (see *Fressoz and Roire* v. France [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; the Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held against the applicant and its context (see *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

27. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2547-48, § 51).

28. The Court furthermore stresses the essential role which the press plays in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (loc. cit.).

ii. Application of the above principles to the present case

29. The Court notes that the applicant was taking part in a public debate about the erection of a statue commemorating Pál Teleki, a former Prime Minister of Hungary. In his view, revisionism of Teleki's role and a public apology for his acts, as advocated by Mr B.T., amounted to "Jew-bashing". In the ensuing proceedings, the domestic courts had to decide whether the statements made by the applicant actually concerned the plaintiff B.T., and whether they were factual and defamatory. Assessing the statements in the context of the whole article written by the applicant, the Court of Appeal held that the impugned expression could be seen as relating to the plaintiff personally. The Supreme Court reaffirmed that "the impugned statement – which was made, in general terms, with regard to the right-wing (extreme right-wing) press – could also be considered to concern the plaintiff". The Court consequently considers that the reference to the plaintiff's person was present but indirect (see also paragraph 21 above).

30. The Court has next to establish to what extent the restriction on the applicant's freedom of expression for the sake of indirectly protecting the reputation of Mr B.T. satisfied the requirements of necessity and proportionality. To that end, the Court will consider the nature of the statement, the resulting damage, the character of the debate, and the respective positions of the applicant and the plaintiff in that debate.

31. The Court notes that the Hungarian courts eventually classified the applicant's statement as one of fact which presented Mr B.T. in a false light. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). However, that classification should not preclude the protection of freedom of expression by being unreasonable or arbitrary.

32. The Court reiterates that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. Where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see, for instance, *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II; *De Haes and Gijsels v. Belgium*, 24 February 1997, *Reports* 1997-I, § 47; and *Oberschlick v. Austria (no. 2)*, 1 July 1997, *Reports* 1997-IV, § 33). As the Court has noted in previous cases, the difference lies in the degree of factual proof which has to be established (see *Scharsach and News Verlagsgesellschaft*, cited above, § 40).

33. The Court notes that the applicant's argument contained a factual statement describing Mr B.T. as someone active in embellishing Pál Teleki's historical role. It appears from the circumstances of the case that

that activity was not in dispute before the domestic courts. However, the Court considers that the applicant's statement of fact was a value-laden one. By indirectly referring to Mr B.T.'s published views, the applicant argued that the apology of a politician with well-known anti-Semitic convictions amounted to objective participation in the process, ongoing in the extreme-right wing press, of the trivialisation of his racist policies – a phenomenon labelled "Jew-bashing".

34. Consequently, the Court cannot fully endorse the domestic courts' findings that the dispute concerned a pure statement of fact; such a conclusion would restrict the protection due under Article 10 of the Convention. The Court is satisfied that the conclusions advanced by the applicant cannot be considered excessive or devoid of factual basis, given Mr B.T.'s apologetic treatment of Pál Teleki – which was referred to by the applicant in his article and not denied by Mr B.T. before the courts – and in view of the role which Pál Teleki played in the enactment of anti-Semitic legislation in Hungary.

35. The Court furthermore notes that the applicant – a historian who had published extensively on the Holocaust – wrote the impugned article in the course of a debate concerning the intentions of a country, with episodes of totalitarianism in its history, to come to terms with its past. The debate was thus of the utmost public interest (compare *Feldek v. Slovakia*, no. 29032/95, ECHR 2001-VIII; *Azevedo v. Portugal*, no. 20620/04, §§ 26 to 34, 27 March 2008; and *Riolo v. Italy*, no. 42211/07, §§ 63 to 73, 17 July 2008).

It therefore considers that this publication deserves the high level of protection granted to the press in view of its functions. In this connection the Court refers to the summary of its established case-law on press freedom in the case of *Scharsach and News Verlagsgesellschaft* (cited above, § 30). It reiterates that there is little scope under Article 10 § 2 for restrictions on political speech or on the debate of questions of public interest (see, among many other authorities, *Feldek*, cited above, § 74). The Court is also mindful of the fact that the plaintiff B.T. was the author of articles widely published in the popular daily press as part of that debate. He thereby voluntarily exposed himself to public criticism. The Court notes that the applicant's disagreement with Mr B.T.'s views was formulated in indirect terms. However, it considers that even harsh criticism in the present context would be protected by Article 10 of the Convention, whether expressed directly or indirectly.

36. The Court further reiterates that the nature and severity of the sanction imposed are also factors to be taken into account when assessing the proportionality of the interference under Article 10 of the Convention (see, for example, *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV, and *Lešník v. Slovakia*, no. 35640/97, § 63, ECHR 2003-IV). In the present case, it is true that the applicant was subjected to civil-law, rather

than criminal, sanctions. However, it considers that the measure imposed on the applicant, namely, the duty to retract in a matter which affects his professional credibility as a historian, is capable of producing a chilling effect. In this connection, the Court emphasises that the rectification of a statement of fact ordered by a national court in itself attracts the application of the protection guaranteed by Article 10 of the Convention.

37. Having regard to the foregoing considerations, the Court finds that the Court of Appeal and the Supreme Court did not convincingly establish any pressing social need for putting the protection of the personality rights of a participant in a public debate above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned. The reasons adduced by those courts cannot be regarded as a sufficient and relevant justification for the interference with the applicant's right to freedom of expression. The national authorities therefore failed to strike a fair balance between the relevant interests.

38. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

40. The applicant claimed EUR 4,000 in respect of non-pecuniary damage.

41. The Government contested this claim.

42. The Court considers that it should award the full sum claimed, namely EUR 4,000.

B. Costs and expenses

43. The applicant claimed EUR 460 in respect of the court fees and legal costs he had had to pay in the domestic proceedings. He also claimed EUR 1,850 for the costs and expenses incurred before the Court. This amount corresponds to EUR 1,720 in legal costs billable by his lawyer (4 hours spent on client consultations, 4 hours spent on case-law research

and 7 hours spent on drafting submissions) as per invoice, and EUR 130 in clerical costs.

44. The Government contested these claims.

45. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the entire sum claimed, namely EUR 2,310.

C. Default interest

46. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,

(ii) EUR 2,310 (two thousand three hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President