



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

## FOURTH SECTION

### DECISION

Application no. 25520/13  
Anna GERÉB  
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 12 November 2019 as a Committee composed of:

Branko Lubarda, *President*,

Carlo Ranzoni,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having regard to the above application lodged on 8 April 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

### THE FACTS

1. The applicant, Ms Anna Geréb, is a Hungarian national who was born in 1951 and lives in Budapest. She was represented before the Court by Ms M. Regász, a lawyer practising in Budapest.

2. The Hungarian Government (“the Government”) were represented by their Agent, Mr Z. Tallódi, Ministry of Justice.

#### **A. The circumstances of the case**

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

4. On 29 January 2003, following disciplinary proceedings, the applicant was dismissed from the Hungarian Film Archive (“the Archive”), where she had previously worked as an archivist. The reason for her dismissal was that she had previously forwarded a note to the Ministry of National Cultural Heritage concerning certain internal affairs of the Archive, without

informing her employer. In the ensuing labour proceedings, the domestic courts upheld the employer's decision on the applicant's dismissal.

5. On 23 January 2004 the applicant published an article in *Élet és Irodalom*, a weekly newspaper, about the film-archiving practices of her previous employer. She maintained that films had been destroyed without proper procedural guarantees and without regard to the Archive's obligation to preserve them.

6. On 27 January 2004 the applicant was invited to give a live radio interview. On the same day a radio station broadcast an interview with Ms V.Gy., the director of the Archive, who stated that criminal proceedings had been initiated against the applicant on charges of defamation and that the statements of the applicant had been "blatant lies". Ms V.Gy. initiated five separate defamation proceedings against the applicant for her comments and articles which had been published in the media.

7. Between 27 January and 3 February 2004 the 35<sup>th</sup> Hungarian Film Week took place. On 27 January 2004 the Archive held a press conference in which both the applicant and Ms V.Gy. appeared. Mr H.P., who had apparently arrived at the event with the applicant, addressed a question to Ms V.Gy. concerning the Archive's practices. Ms V.Gy. replied that her opinion had been published in *Élet és Irodalom* as a response to the applicant's article and that disciplinary and defamation proceedings had been initiated against the applicant. She maintained that the applicant's statements had been blatant lies and defamatory. Mr I.Sz., the husband of Ms V.Gy. and a famous film director, addressed the participants, describing the legislative background of the functioning of the Archive and its aim to keep ownership of Hungarian films in the hands of the Hungarian State. He concluded with the remark that "every political or interest group has always found its van der Lubbe. This time as well. The Reichstag is on fire: I'm very happy".

8. The applicant brought defamation proceedings under Article 75 § 1 of the Civil Code against Ms Gy.V. and Mr I.Sz., seeking a declaration that the nature of the respondents' statements had been defamatory, and seeking compensation for pecuniary and non-pecuniary damage. She maintained that since the incident, her professional relationships had been disrupted and she had not been able to get a new professional position.

9. In its judgment of 2 February 2012 the Budapest High Court dismissed the applicant's claims. The court found that the impugned statements had been value judgments and therefore their veracity could not be assessed. Furthermore, the applicant's right to reputation had to be balanced against the respondents' right to freedom of expression. The court stated that the applicant, through her statements concerning the Archive and her participation at the press conference, had become a quasi-public figure and as such had to tolerate broader criticism than private individuals.

10. On 4 December 2012 the Budapest Court of Appeal upheld the first-instance judgment, adding that the applicant was not a quasi-public figure but a public figure and that the impugned statements of the respondents had been expressed in the course of an ongoing professional debate and in a tensed situation.

## **B. Relevant domestic law**

11. Article IV of the Fundamental Law, in so far as relevant, reads as follows:

“1. Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected.”

12. The Constitutional Court Act (Act no. CLI of 2011), in force as of 1 January 2012, provides as follows:

### **Section 27**

“An individual or organisation involved in a particular case may lodge a constitutional complaint with the Constitutional Court against a court ruling allegedly contrary to the Fundamental Law in accordance with Article 24 § 2 (d) of the Fundamental Law where there has been a ruling on the merits of the case or another ruling closing the court proceedings

(a) violates the complainant’s right enshrined in the Fundamental Law, and where

(b) the complainant has already exhausted the remedies or no remedies are available.”

## **COMPLAINT**

13. The applicant complained that the refusal by the Hungarian courts to award her compensation for allegedly offensive statements had infringed her right to reputation.

## **THE LAW**

14. The applicant complained about the decisions of the domestic courts not to award her compensation for the alleged defamatory statements expressed during a press conference. She relied on Articles 13 and 17 of the Convention. The Court, being the master of the characterisation to be given in law to the facts of a case (*see Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

15. The Government submitted that the applicant should have pursued a constitutional complaint in accordance with section 27 of the Constitutional Court Act (see paragraph 12 above).

16. The applicant disagreed. She asserted that the present case concerned the State’s positive obligation to adopt measures designed to secure respect for private life even in the sphere of individuals’ relationships with each other. Relying on the case of *Király and Dömötör v. Hungary* (no. 10851/13, §§ 48-49, 17 January 2017), which concerned the question of effectiveness of the same remedy for the applicants’ complaint under Article 8 of the Convention, she maintained that there had been no constitutional right or domestic judicial practice that could have remedied the breach of her human rights. She argued that the Government had not referred to any decision of the Constitutional Court that would demonstrate otherwise either.

17. The Court cannot subscribe to the applicant’s view that Mr Király and Mr Dömötör were not required to have lodged a constitutional complaint because of its ineffectiveness as such in securing respect for private life in the sphere of the relations of individuals between themselves. Rather, in that case the Government did not demonstrate that there was a constitutional right or a domestic judicial practice allowing an individual to seek, with any prospect of success, the concrete, physical intervention of the police to avert a racist menace. It was this element which led the Court to conclude that those applicants, in those very specific circumstances, could not be expected to have availed themselves of that legal avenue (see *Király and Dömötör*, cited above, §§ 48-49).

18. In the present case, however, the issue is the alleged inadequacy of the protection afforded by the domestic courts to the applicant’s private life in the sphere of the relations of individuals between themselves and the courts’ alleged failure to discharge their positive obligations under Article 8 in this respect.

19. The Court has already held that a constitutional complaint under section 27 of the Constitutional Court Act is an effective remedy which normally needs to be exhausted for the purposes of Article 35 § 1 of the Convention in situations where the application concerns Convention rights equally protected by the Fundamental Law of Hungary (see *Szalontay v. Hungary* (dec.), no. 71327/13, §§ 30-40, 12 March 2019). Furthermore, as the Court has previously noted, the Constitutional Court may examine constitutional complaints under section 27 of the Constitutional Court Act if

the alleged grievance has occurred as a result of court rulings contrary to the Fundamental Law (see *Szalontay*, cited above, § 33).

20. The present case concerns complaints of an alleged breach of the applicant's right to reputation, which is enshrined in Article 8 of the Convention and Article VI of the Fundamental Law (see paragraph 11 above) and the alleged unconstitutionality of the application of the law by the lower-level courts (see paragraph 18 above). It follows that the constitutional complaint under section 27 of the Constitutional Court Act would have been an effective remedy to exhaust in the circumstances.

21. Since the applicant did not avail herself of this legal avenue, the application must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 5 December 2019.

Andrea Tamietti  
Deputy Registrar

Branko Lubarda  
President