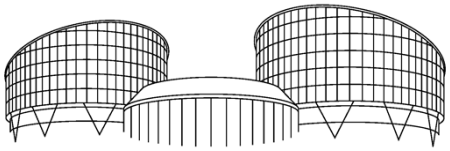

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MÁRIA SOMOGYI v. HUNGARY

(Application no. 15076/17)

JUDGMENT

Art 10 • Freedom of expression • Compensation order against the applicant for an infringement of a municipality's personality rights for having shared a third party's Facebook post concerning the management of municipality owned property and the use of public funds • Civil defamation proceedings seeking to protect the municipality's reputation did not pursue any of the legitimate aims enumerated in Art 10 § 2

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 May 2024

FINAL

16/08/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Mária Somogyi v. Hungary,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Gilberto Felici*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 15076/17) against 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, Ms Mária Somogyi ("the applicant"), on 7 February 2017;

the decision to give notice to the Hungarian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 9 April 2024,

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

INTRODUCTION

1. The application concerns a complaint under Article 10 of the Convention about an order that the applicant was to pay compensation for an infringement of the personality rights of a municipality for having shared a Facebook post by a third party.

THE FACTS

2. The applicant was born in 1954 and lives in Tata. She was represented by Mr T. Hüttl, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. On 10 December 2014 K. published a post on his Facebook page calling on the inhabitants of Tata to participate in a demonstration. He stated that the reason for the demonstration was that the Tata municipality had sold a municipally owned heritage building for less than the market price to a local businessman, L., who had then rented out the same building, to municipal bodies, for a "crazy high price". K. described that as "robbing the citizens of Tata". He called on the local community to organise a demonstration so that the municipality did not "fill the pockets" of the businessman mentioned in

the post. He concluded his post as follows: “We need to reconsider whether the sale of the property was lawful. Was there an open call? Did the buyer pay the real price? Was there a need to sell the city’s property? Our property... Please share many times!” At the top of his post K. wrote: “Attention! Important! Please share K.’s call!”

6. The applicant shared K.’s post on her Facebook wall, adding a comment of her own, on another issue, questioning the amount paid by the municipality for new premises for the local registry office, which had had to change location as the mayor had been disturbed by the number of people visiting it.

7. The Tata municipality (*Tata Város Önkormányzata*) and the Tata joint municipal office (*Tata Közös Önkormányzati Hivatal*) brought a civil action against the applicant, seeking compensation for non-pecuniary damage in the amount of 5,000,000 Hungarian forints (HUF) (approximately 1,400 euros (EUR)) for the violation of their right to reputation, and an injunction against the applicant, ordering her to terminate her unlawful conduct and not to engage in further unlawful conduct.

8. The municipality published a press release stating that they had lodged a criminal complaint against the publisher of the original post and against any person who had shared it and disseminated untrue information. In the applicant’s case the prosecutor’s office decided not to open an investigation.

9. In its decision of 18 February 2015 in the civil proceedings, the Tatabánya High Court found for the plaintiff and ordered the applicant to:

(a) post on her Facebook page an apology to the Tata municipality and the Tata joint municipal office for having infringed their personality rights;

(b) post a notice on her Facebook page to the effect that the allegation that employees of the Tata municipality and the Tata joint municipal office had sold the property in question to L. in the knowledge that municipal bodies would subsequently rent the same property from L., and that they had collaborated with L., was false; and

(c) pay the municipality and the joint municipal office HUF 50,000 (approximately EUR 140 euros) each by way of compensation for non-pecuniary damage.

10. The High Court held, in line with the case-law of the Constitutional Court, that State institutions had no fundamental rights. However, it stated that the subject matter of the case had not concerned the exercise of public power, but the exercise of property rights, and therefore the plaintiffs had been entitled to protection of their personality rights. The court found that it was necessary to restrict the applicant’s right to freedom of expression in order to protect public trust in State institutions, because she had shared untrue information suggesting that the municipality had not acted in the best interest of citizens. It also held that the fact that the applicant had not been aware of the untrue nature of her statements exempted her only from criminal, but not from civil liability. The High Court had regard to the fact that the

applicant had posted the text on Facebook and that the statements had been serious enough to tarnish the reputation of the plaintiffs.

11. The applicant appealed against that judgment.

12. On 10 September 2015 the Győr Court of Appeal upheld the first-instance judgment in respect of Tata municipality and dismissed the case in respect of Tata joint municipal office. It considered that legal entities were also entitled to protection of their reputations, which in the case of public bodies corresponded to the public trust of citizens. It endorsed the first-instance court's finding that the case had not concerned the municipality's exercise of public power. It also held that the dissemination of untrue information was not protected by the right to freedom of expression. It reduced the compensation for non-pecuniary damage to HUF 10,000 (approximately EUR 28) and ordered the applicant to pay costs and court fees in the amount of HUF 55,000 (EUR 152).

13. The applicant appealed against that judgment, but it was upheld by the *Kúria* on 8 June 2016. The applicant was ordered to pay costs and court fees in the amount of HUF 80,000 (EUR 222).

14. The applicant then lodged a constitutional complaint, which was declared inadmissible on 5 September 2017. The Constitutional Court found that her complaint had not challenged the constitutionality of the court judgments but rather the establishment of facts, in that she had argued that the statements shared by her had not constituted facts but value judgments.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant provisions of Act no. V of 2013 on the Civil Code provide as follows:

Article 2:42
General protection of personality rights

"(1) Everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, for his home, and for his communications via any medium, and the right to a good reputation and not to be hindered by anyone from exercising these rights.

(2) Everyone shall respect human dignity and the personality rights derived from it. Personality rights are protected by this Act.

..."

Article 2:45
Right to honour and reputation

"...

(2) Infringement of reputation means, in particular, misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts.

..."

Article 2:52
Damages

"(1) Any person whose personality rights have been violated may seek compensation in respect of non-pecuniary damage done to him.

..."

II. RELEVANT COUNCIL OF EUROPEAN MATERIAL

16. For the relevant Council of Europe material see *OOO Memo v. Russia*, (no. 2840/10, § 23, 15 March 2022).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

17. The applicant argued that domestic courts' decision to impose a penalty on her for sharing a Facebook post by a third party had breached 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."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

19. The applicant argued that it could not be claimed that the interference complained of had pursued the "legitimate aim" of protecting the reputation of others. She did not dispute that a legal entity exercising "public, political authority" might have a legitimate interest in the protection of its reputation. That interest was, however, of a public rather than private nature. In contrast to the judiciary, institutions belonging to the political branches of power had to protect their own reputation through their political activity and open engagement with the democratic public. Furthermore, and unlike courts, legal entities exercising public and political authority were not prohibited from responding to the wider public regarding matters pertaining to their performance. A municipality could not have a private life and had no right to the protection of its reputation under Article 8 of the Convention. Moreover, the applicant expressed doubts as to whether the municipality's reputation had been involved in the present case, in view of the Court's case-law requiring that an attack on personal honour and reputation had to attain a certain level of seriousness and must have been carried out in a manner causing prejudice.

20. The applicant further argued that by sharing the impugned post she had intended to contribute, as a concerned citizen, to a debate of public interest. She had not been the original author of the post but had merely shared it, and it had been unreasonable to hold her to the same high standards of liability as expected of professional portals when they shared content. She had shared the post on her personal Facebook page, which did not have a particularly high profile, and she had not received any financial gain by doing so.

21. Moreover, the municipality had had the means to refute the allegations and it had immediately done so. Even if the shared post had been factually erroneous, the mistake had been negligible and had not affected the overall message conveyed by the applicant, namely, that the municipality had mismanaged public funds. In any event, it would have been unreasonable to expect her to check the veracity of the post before sharing it.

22. The applicant further submitted that the fact that she had had to pay non-pecuniary damages and the costs associated with legal proceedings lasting for several years had been disproportionate to the triviality of the post.

23. Finally, the applicant called on the Court to consider the chilling effect of such civil-law sanctions on the use of social media platforms, which were the only public forum where the average citizen could actively participate in public discourse on matters of general interest.

(b) The Government

24. The Government argued that the statements shared by the applicant had been partly untrue and were capable of adversely affecting public opinion and the reputation and prestige of the municipality, as had been established by the domestic courts. In their understanding the sharing of the Facebook post had constituted defamation by reporting.

25. The circumstance that the statement had been shared on a social media platform and that the dissemination of the statement had been limited were relevant only to the gravity of the sanctions imposed, but not to the question whether the infringement of personality rights had taken place. In that respect the Government pointed out that this approach had been applied by three levels of domestic courts, with the higher instance courts reducing the fine imposed by the first-instance court. The High Court had had regard to the fact that it had been only a minor fault that the applicant had not checked the veracity of the shared content, that her Facebook page had not had a particularly high profile and that the infringement had had no significant effect on the plaintiffs.

26. The Government argued that the municipality, as a legal entity, had fundamental rights. The reputation of those acting in business life corresponded to the municipality's interest in maintaining the public's trust. They nonetheless endorsed the finding of the *Kúria* that those exercising public power had to tolerate broader criticism.

27. Lastly, the Government submitted that the sanction imposed on the applicant had been proportionate and corresponded to the gravity of the infringement.

2. The Court's assessment

28. While it is not in dispute between the parties that the judgments of the Hungarian courts constituted an interference with the applicant's right to freedom of expression, and that the interference in question had a legal basis in domestic law, the parties have disagreed as to whether it pursued a "legitimate aim" within the meaning of Article 10 § 2 of the Convention, and whether it was proportionate to the aim sought.

29. The Court reiterates that the list of legitimate aims provided in paragraph 2 of Article 10 is exhaustive. Strictly construed, that paragraph accords – as an exception in view of its special role in society – protection to only one branch of public power, the judiciary (see, for details, *Morice v. France* [GC], no. 29369/10, §§ 128-30, ECHR 2015).

30. The Court has long held that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. The concept of "private life" is a broad term not susceptible to exhaustive definition, which also covers the physical and psychological integrity of a person. In order for Article 8 to come into play,

however, an attack on a person's reputation must attain a certain level of seriousness and [have been carried out] in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, with further references, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017).

31. However, the ambit of the "protection of the reputation ... of others" clause of paragraph 2 of Article 10 is not restricted to natural persons, notwithstanding a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society. Whereas the latter might have repercussions on one's dignity, the former are devoid of that moral dimension (see *OOO Regnum v. Russia*, no. 22649/08, § 66, 8 September 2020).

32. The Court has recognised that there exists a legitimate "interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good" (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II, and *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). However, as regards public bodies seeking legal protection of their reputation, in the case of *Steel and Morris* (cited above, § 40) the Court noted the position under the laws of England and Wales, whereby "local authorities, government-owned corporations and political parties ... [cannot] sue in defamation, because of the public interest that a democratically elected organisation, or a body controlled by such an organisation, should be open to uninhibited public criticism". In the context of publications by the media, the Court has considered that shielding bodies of the executive branch of State power, which had the ability to respond to any adverse allegations in the "court of public opinion" through their public relations capabilities, from media criticism by way of according them protection of their "business reputation" might seriously hamper freedom of the media. That executive bodies be allowed to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their role of purveyor of information and public watchdog (see, *mutatis mutandis*, *Dyuldin and Kislov v. Russia* (no. 25968/02, § 43, 31 July 2007)).

33. Similarly, in the case of *Lombardo and Others v. Malta* (no. 7333/06, § 50, 24 April 2007) the Court held that it was only in exceptional circumstances that a measure proscribing statements criticising the acts or omissions of an elected body could be justified with reference to "the protection of the rights or reputations of others".

34. In the case of *Romanenko and Others v. Russia* (no. 11751/03, § 39, 8 October 2009) concerning a court's management department, which was a public body, the Court acknowledged "that there may be sound policy reasons to decide that public bodies should not have standing to sue in defamation in their own capacity.

35. Where there is no dispute between the parties regarding the existence of a legitimate aim, the Court has focused on assessing the proportionality of an interference when examining complaints under Article 10 stemming from defamation proceedings brought by a municipal council (see *Pinto Pinheiro Marques v. Portugal*, no. 26671/09, §§ 39-47, 22 January 2015), by a remand prison and two of its officers (see *Reznik v. Russia*, no. 4977/05, §§ 41-51, 4 April 2013), by the Chief Military Prosecutor's Office of Russia (see *Novaya Gazeta and Milashina v. Russia*, no. 45083/06, § 62, 3 October 2017), by the electoral commission and the executive body of a constituent entity of the Russian Federation and a regional branch of the United Russia party (see *Ostanina v. Russia*, no. 22169/11, 17 April 2018), and by the executive body of a constituent entity of the Russian Federation (see *Margulev v. Russia*, no. 15449/09, § 45, 8 October 2019, and *Kommersant and Others v. Russia* [Committee], nos. 37482/10 and 37486/10, 23 June 2020).

36. In the case of *OOO Memo* (cited above, §§ 44 and 46) the Court considered that bodies of the executive vested with State powers were essentially different from legal entities, including public or State-owned corporations, engaged in competitive activities in the marketplace, in that the latter relied on their good reputation to attract customers with a view to making a profit and the former existed to serve the public and were funded by taxpayers. By virtue of its role in a democratic society, the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differed from both the right to reputation of natural persons and the reputational interests of legal entities, private or public, which competed in the marketplace.

37. The Court thus held that civil defamation proceedings brought by a legal entity that exercised public power could not, as a general rule, be regarded to be in pursuance of the legitimate aim of the "protection of the reputation ... of others" under Article 10 § 2 of the Convention. It nonetheless has not excluded the possibility that individual members of a public body, who could be "easily identifiable" in view of the limited number of its members and the nature of the allegations made against them, might be entitled to bring defamation proceedings individually in their own names (see *OOO Memo,* cited above, § 47).

38. Based on the above considerations, the Court considers it apt to establish whether the interference complained of – namely, the civil claim concerning personality rights lodged by the Tata municipality and the Tata joint municipal office against the applicant, a private person, for sharing a Facebook post – was in pursuance of the legitimate aim of "the protection of the reputation ... of others" within the meaning of Article 10 § 2 of the Convention.

39. The Court notes the reasoning of the Tata High Court, drawing attention to the case-law of the Constitutional Court according to which

public bodies did not have fundamental rights. However, in the understanding of the High Court, that principle was irrelevant for the circumstances of the applicant's case, because the plaintiffs had not been exercising their public power but rather their right to property.

40. The Court notes that the statement for which the applicant was held liable had targeted the behaviour of the municipal administration. The plaintiffs in the domestic proceedings were the Tata municipality and the Tata joint municipal office.

41. The contested sale did not concern privately owned property or direct economic activities, but the management of municipally owned property and the use of public funds. Notwithstanding the reasoning of the domestic courts, the Court is not convinced that the municipality had an "interest in protecting its commercial success and viability", whether for "the benefit of shareholders and employees" or "for the wider economic good" (see *Steel and Morris*, cited above, § 94; compare *OOO Memo*, cited above, § 48), that would warrant legal protection. It was not a competitive actor in the immovable property market seeking to maximise their profits by attracting customers. Even in the exercise of their right to property, it was supposed to serve the public and was funded by taxpayers.

42. Nor could it be said that its members were "easily identifiable" (compare and contrast *Thoma v. Luxembourg*, no. 38432/97, § 56, ECHR 2001-III and *Kaperzyński v. Poland*, no. 43206/07, § 61, 3 April 2012) given that neither the original post shared by the applicant nor her own comment concerned alleged wrong-doing by any identified or identifiable employees. In any event, the defamation case was brought by the legal entities as such, not any by their individual members.

43. Accordingly, the Court finds that the civil defamation proceedings brought by the Tata municipality against the applicant did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 10 of the Convention. Where it has been shown that the interference did not pursue a legitimate aim, it is not necessary to investigate whether it was "necessary in a democratic society".

44. It follows that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed HUF 145,000 (EUR 402) in respect of pecuniary damage and EUR 1,500 in respect of non-pecuniary damage.

47. The Government contested these claims.

The Court considers that the applicant suffered pecuniary losses on account of the amounts that she was ordered to pay in compensation (see paragraphs 12-13 above). It awards her the full sum claimed.

48. Moreover, it considers that the applicant must have suffered some non-pecuniary damage. Making its assessment on an equitable basis, the Court accepts the applicant's claim in full and awards her EUR 1,500 under this head.

B. Costs and expenses

49. The applicant also claimed EUR 980 in respect of the costs and expenses incurred before the domestic courts and EUR 840 in respect of those incurred before the Court. Those sums correspond to thirty-five and thirty hours of legal work billable by her lawyer at an hourly rate of EUR 28.

50. The Government contested these claims.

51. 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 were actually and necessarily incurred and are 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 full sum claimed covering costs under all heads, plus any tax that may be chargeable to the applicant.

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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 402 (four hundred and two euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,820 (one thousand eight hundred and twenty 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 16 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Marko Bošnjak President