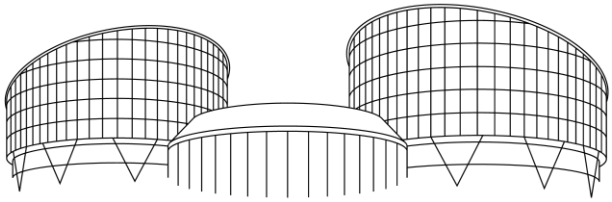

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF UJ v. HUNGARY

(Application no. 23954/10)

JUDGMENT

STRASBOURG

19 July 2011

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 Uj v. Hungary,

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

Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 23954/10) 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 Péter Uj ("the applicant"), on 22 April 2010.

2. The applicant was represented by Mr L. Baltay, a lawyer practising in Gyál. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that his prosecution for criticising the quality of a certain type of wine amounted to a breach of his right to freedom of expression.

4. On 15 June 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Budaörs.

6. On 2 January 2008 the applicant, a journalist, published an article in a column entitled "Opinion" of a national daily paper. The subject of the article was the quality of a well-known Hungarian wine variety, a product of

T. Zrt, a State-owned corporation, which was, in the applicant's view, bad and its popularity with Hungarian consumers unjustified. The article contained the following passage:

> "On nine out of ten occasions, it is a product of T. Zrt, available below 1,000 [Hungarian forints] per bottle, that represents the world's best wine region, the Hungarian National Pride and Treasure... [and that could make me cry]. Not only because of the taste – although that alone would easily be enough for an abundant cry: sour, blunt and over-oxidised stuff, bad-quality ingredients collected from all kinds of leftovers, grey mould plus a bit of sugar from Szerencs, musty barrel – but because we are still there ...: hundreds of thousands of Hungarians drink [this] shit with pride, even devotion... our long-suffering people are made to eat (drink) it and pay for it at least twice ([because we are talking about a] State-owned company); it is being explained diligently, using the most jerk-like demagogy from both left and right, that this is national treasure, this is how it is supposed to be made, out of the money of all of us, and this is very, very good, and we even need to be happy about it with a solemn face. This is how the inhabitants (subjects) of the country are being humiliated by the skunk regime through half a litre of alcoholised drink.
>
> And once again, I would remind everybody of how people were whining back then, saying that foreigners were coming to destroy [T.], buy up the market and make everything multinational and alien-hearted; and then it turned out that those foreigners made gorgeous wine, just like some lucky, resolute and very talented Hungarian family wineries, that they tried to make [T.] world-famous again, because this was their business interest (profit, ugh!); while we as a community are trying to destroy their achievements using State money, lest something finally could be a success. ..."

7. T. Zrt filed a criminal complaint against the applicant. On 2 June 2009 the Budapest II/III District Court convicted him of defamation (*rágalmazás*). The court held that the criticism expressed in the applicant's article went beyond the boundaries of journalistic opinion and amounted to stating a fact susceptible of harming the reputation of the producer of the wine variety in question. The court refrained from imposing a sentence for a probationary period of one year.

8. On appeal, on 5 November 2009 the Budapest Regional Court reversed this judgment, holding that the incriminated statement was a value judgment and that therefore the applicant was to be convicted for libel (*becsületsértés*) under section 180(1)b of the Criminal Code. The court held that although the applicant was entitled to express his opinion about the wine in question, by characterising it as "shit" – an expression unduly insulting – he had infringed the producer's right to a good reputation. The court reduced the sanction to a reprimand.

9. On 10 May 2010 the Supreme Court upheld the applicant's conviction and sentence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

10. The applicant complained that his conviction represented an infringement of his right to freedom of expression as provided in 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."

11. The Government contested that argument.

A. Admissibility

12. 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

13. The Government did not dispute that there had been an interference with the applicant's right to freedom of expression. They argued however in essence that the impugned expression was so offensive that the applicant's prosecution had corresponded to a pressing social need. In any event, his case had finished with only a reprimand; consequently, the interference could not be considered disproportionate.

14. The applicant submitted that he did not dispute that the interference was lawful and pursued a legitimate aim. He argued nevertheless that his conviction was not necessary in a democratic society, given that he was a journalist, the impugned statement was a value judgment concerning a matter of public interest, and the case concerned the reputation of a State-owned corporation.

15. The Court notes that it has not been disputed by the Government that there has been an interference with the applicant's right to freedom of expression. It reiterates 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.

16. The Court observes that the lawfulness of the measure complained of was based on section 180(1)b of the Criminal Code. It is therefore satisfied that it was "prescribed by law", and this has not been disputed by the parties. Moreover, it accepts that the interference pursued a legitimate aim, namely the protection of the reputation or rights of others, which again has not been in dispute between the parties. It remains to be determined whether the interference was "necessary in a democratic society".

17. 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; *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII). There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Although freedom of expression may be subject to exceptions, they must be narrowly interpreted and the necessity for any restrictions must be convincingly established (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216).

18. 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).

19. 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 *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII). Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204).

20. The Court would add that offence may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult (see, e.g. *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003); but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression.

21. 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.*).

22. In the present case, the Court observes that the impugned criminal charges were pressed by a company which undisputedly has a right to defend itself against defamatory allegations. In this context the Court accepts that, in addition to the public interest in open debate about business practices, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoys a margin of appreciation as to the means it provides under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II; *Kuliś and Różycki v. Poland*, no. 27209/03, § 35, ECHR 2009-...). However, there is a difference between the commercial reputational interests of a company and the reputation of an individual concerning his or her social status. Whereas the latter might have

repercussions on one's dignity, for the Court interests of commercial reputation are devoid of that moral dimension. In the instant application, the reputational interest at stake is that of a State-owned corporation; it is thus a commercial one without relevance to moral character.

23. The Court notes that the expression used by the applicant is offensive. Nevertheless, the subject matter of the case is not a defamatory statement of fact but a value judgment or opinion, as was admitted by the domestic courts. The publication in question constituted a satirical denouncement of the company within the context of governmental economic policies and consumer attitudes (see paragraph 6 above). Taking the above facts into account, the Court finds that the applicant's primary aim was to raise awareness about the disadvantages of State ownership rather than to denigrate the quality of the products of the company in the minds of the readers. The opinion was expressed with reference to government policies concerning the protection of national values and the role of private enterprise and foreign investment. It dealt therefore with a matter of public interest.

24. The Court considers that the domestic courts failed to have regard to the fact that the press had a duty to impart information and ideas on matters of public interest and in so doing to have possible recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Mamère v. France*, no. 12697/03, § 25, ECHR 2006–XIII, and *Dąbrowski v. Poland*, no. 18235/02, § 35, 19 December 2006). For the Court, the wording employed by the applicant was exaggerated but made in a public context; the expression used is, regrettably, a commonly used one in regard of low-quality wine and its vulgarity thus constituted a forceful part of the form of expression.

25. The Court finds that the above considerations are important in assessing the proportionality of criminal-law based interference with Article 10 of the Convention, but were not examined by the domestic courts. It finds that, in the absence of considering the above factors which are preponderant in the present case, the domestic authorities could not establish that the restriction was proportionate.

26. In view that of the fact that the necessity for the interference has not been not convincingly established by the domestic authorities, the Court cannot but conclude that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant made no damages claim.

B. Costs and expenses

29. The applicant claimed 3,580 euros (EUR) for the costs and expenses incurred before the Court. This amount corresponds to 35 hours of legal work billable by his lawyer as per the time-sheet submitted at an hourly rate of EUR 100 and additionally to EUR 80 of clerical costs.

30. The Government did not comment on this claim.

31. 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 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, i.e. EUR 3,580.

C. Default interest

32. The Court considers it appropriate that the default interest 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, EUR 3,580 (three thousand five

hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Hungarian forints at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President