

Central District Court of Pest  
Number 22.B.24.358/2011/15

398

file 0110

2011 -05- 27

ÉRKEZETT

For and on behalf of the Republic of Hungary

2011 JÚL -6.

DEJÁRVA	ELJÁRÁS
MELLÉKLET	KÖZTUK: <i>tk</i>
ÜGYIRÁTSZÁM	
ÜTÖIRATON:	<i>A</i>

The Central District Court of Pest, based on the continued public hearing held on 6 April and 3 May 2011 in the criminal case pending under number 22.B.24.358/2011, has passed, in Budapest on 3 May 2011, the following

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**judgement:**

Dr. Efraim Yaacov Zuroff

**the accused**, who was born in New York City in the United States of America on the 5<sup>th</sup> day of August 1948; a citizen of Israel and the United States of America; passport number: 12908705; residing at 92147 Jerusalem (Israel), Mandaley str. 1.

has been **acquitted** of the charge of the *offence of defamation committed on a continuous basis* [Subsections 179(1) and (2) Paragraph (b) of the Criminal Code].

The costs incurred by the private prosecutor shall be borne by said prosecutor himself, while the costs of translation and interpretation incurred during the proceedings shall be borne by the Hungarian State.

This judgement may be appealed by Dr. Sándor Képiró, acting as private prosecutor, within eight days of the receipt hereof.

JUSTIFICATION

Dr. Sándor Képiró, acting as private prosecutor, in his denunciation dated 11 May 2007 and in his supplementary denunciation submitted on 18 February 2008, accused Dr. Efraim Yaacov Zuroff of the crime of defamation in conflict with the provisions of Subsection 179(1) of the Criminal Code and classed as such under Subsection 179(2) paragraphs (b) and (c) of the Criminal Code.

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The court has established the following **historical facts of the case** in conformity with the facts stated in the denunciation:

Dr. Efraim Yaacov Zuroff, the accused, the head of the Jerusalem Office of the Simon Wiesenthal Centre, **on the 13<sup>th</sup> day of April 2007** forwarded a communiqué to the editorial office of Népszava seated at **Budapest 8<sup>th</sup> District, Könyves Kálmán krt. 76**, stating that *"Dr. Sándor Képíró is the fifth most wanted war criminal on the list of the Simon Wiesenthal Centre enumerating Nazi war criminals."*

On the 16<sup>th</sup> day of April 2007, on the commemoration of the March of Life organised by the Hungarian Jewish Community, Dr. Efraim Yaacov Zuroff, the accused, said the following in his speech held in **Frankel Leó street of Budapest, 13<sup>th</sup> District**: *"Dr. Sándor Képíró was instructed in 1942 to gather together Jews, Serbs and Gypsies in Novi Sad, many of whom were shot into the Danube shortly thereafter. Sándor Képíró knew, or certainly should have known, that this was a most horrible and inhuman act, and he still collaborated with those who had instructed him to do so. Being a lawyer, he must have been aware of the illegality of his actions, and this was the reason why he asked for written instructions. When he was told that he would only be given verbal instructions, he notwithstanding agreed to implement such instructions, even if they were totally unethical and illegal. It was due to the actions of such people that the Holocaust was able to be prosecuted with such staggering results. When such educated, highly-qualified people as Képíró were prepared to commit the most heinous of crimes, there was simply no limit to the cruelty that the vulnerable sections of society were exposed to."* The speech was covered by several daily papers, and appeared in its entirety on the website of the Hungarian Jewish Community.

Prior to the **22<sup>nd</sup> day of January 2008**, Dr. Efraim Yaacov Zuroff, the accused, forwarded a communiqué to the editorial office of Népszava seated at **Budapest 8<sup>th</sup> District, Könyves Kálmán krt. 76**, stating that *"Dr. Sándor Képíró took part as a gendarme in the massacre at Novi Sad, for which he was condemned by a people's tribunal in 1942. Sándor Képíró must pay for his crimes. How is it possible that Sándor Képíró, who is most obviously guilty, is still free to walk the streets of Budapest?"*

The private prosecutor submitted a private motion within the deadline prescribed by law.

Dr. Efraim Yaacov Zuroff made his statements based on the judgement in his possession passed by the Court of the Chief of Staff of the Hungarian Royal Army, acting as tribunal, on the 22<sup>nd</sup> January 1944 under number H.448/43, sub-

number 118, declaring the private prosecutor Dr. Sándor Képiró – as the 13<sup>th</sup> accused – and his companions, guilty of the crime of disloyalty committed as stated in the judgement by urging their subordinates during the operations of the armed forces in the former Southern Hungary (today Northern Serbia) by common consent to commit crimes by wilful breach of their official duties and in particular to carry out murders, thus consciously becoming perpetrators of process wherein regular cleansing operations by armed forces ordered by top military officers degenerated into systematic massacre, brutality and looting.

The Metropolitan Court of Budapest granted an order dated 19 February 2007 under number 9.Beü.969/2006/23 declaring that the above judgement is unenforceable as it can be ascertained as a fact that Dr. Sándor Képiró was reemployed by the gendarmerie in his position in 1944, which gives rise to the assumption that the judgement has been annulled. This decision was upheld by the Metropolitan Court of Justice in its order dated 11 May 2007 under number 5.Bkf.10.281/2007/3 and consequently entered into legal effect.

The Investigation Department of the Public Prosecutor's Office of Budapest instituted proceedings against Dr. Sándor Képiró on account of criminal acts committed during operations in the former Southern Hungary (today Northern Serbia), which also resulted in accusations. The proceedings are still pending before the Metropolitan Court of Budapest.

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During the ***process of proof***, the court heard the accused, and then heard the private prosecutor as a witness. In connection with the proving of the truth, the court expounded the judgement submitted by the accused and the minutes taken in 1946 of the hearing of János Nagy as suspect. Also described were the verdicts passed in the earlier judicial proceedings held in response to the request for an order declaring the enforceability of the military tribunal judgement passed against Dr. Sándor Képiró, as well as the ad-hoc expert opinions of historians given in the case.

**Dr. Efraim Yaacov Zuroff, the accused**, has pleaded not guilty but confirmed the content of the denunciation as regards the facts. At the hearing, he declared that he had indeed forwarded the communiqués to Népszava, that they were his words that were cited at the March of Life event on the website of the Hungarian Jewish Community, and that it was indeed he who had said those

precise words. He did so for the reason that based on the judgement of 1944 obtained from the Public Records Office of Beograd he was and remained convinced that its content was, and still is, true and correct. Besides this, the testimony of a suspect was also available to him, supplied by János Nagy in 1946, who furnished information incriminating Dr. Sándor Képiró. The accused also said that, as the head of the Simon Wiesenthal Centre and a historian, his aim was to bring war criminals still alive to justice within the framework of the action plan of Last Chance announced by the Centre. When Dr. Sándor Képiró, having moved home from Argentina, came within their sights, they began to investigate, and it was thus that they found the judgement of 1942 and the suspect's testimony given in 1946. He went public on the matter because he believed that despite the evidence he had submitted the Hungarian authorities were failing to do their best to implement the judgement, and in order to call Dr. Sándor Képiró to account; and in this way he hoped to apply pressure on the public organs to act.

In his testimony, **Dr. Sándor Képiró**, acting as **private prosecutor**, pleaded that he was told by his acquaintances that articles pertaining to him had been published in the newspapers, and that the statements made at the March of Life event had been quoted on the radio and on television. He confirmed that there had indeed been proceedings pending against him on account of his involvement in the raid in Novi Sad, and he had indeed been sentenced for this reason, and he had also begun to serve his sentence, but the verdict had been annulled later on. He said that the judgement had been based on lies, and passed on the grounds that the Hungarian Government desired in this manner to appear in a more favourable light during the peace negotiations. Around the end of the war, he escaped to Austria and then to Argentina. *In his autobiographical notes entitled "My Life"* and in his written report, the private prosecutor himself mentions the judicial proceedings that had been conducted against him in 1943-1944. In remembering what happened in his written account entitled *The true story of the raid in Novi Sad, or how I became a "war criminal"*, he gives a detailed account of the ordering and course of the "cleansing and retribution operations" in Novi Sad, also confirming that squads of soldiers carried out executions at the banks of the Danube, in which the gendarmerie was not involved at all. He was released on 22 March 1944 and then reengaged as gendarmerie captain from 1 June.

On the strength of the articles and printed documents constituting annexes to the **denunciation**, the court was effectively able to record precisely the statements objected to, which were also confirmed by the accused, who acknowledged that he had said them. On these grounds, it was not a question of

dispute whether the accused had made communications of such content at the times and at the places indicated therein using the press, or by word of mouth, in public.

The court conducted a detailed process of proof in respect of the documents submitted by the accused, given that the accused had referred to the same as being documents underlying the true content of his communication.

The stamp of the Yugoslavian Public Records Office can be seen on the pages of the copy of the **judgement** passed by the Court of the Chief of Staff of the Hungarian Royal Army, acting as tribunal, under **number H.448/43 sub-number 118 and** submitted by the defence. It can be seen in the judgement, continuously numbered and drawn up in Hungarian, that on the basis of the hearing held between 14 December 1943 and 24 January 1944, judgements were handed down against fourteen officers in the service of the Hungarian Royal Gendarmerie on account of the crime of disloyalty under Subsection 59(1) paragraphs 1 and 4 and Subsection 59(2) of Act III of 1930. It is also set forth in the judgement that it had been committed by the accused, including Dr. Sándor Képiró, gendarmerie captain, as follows: *"In Novi Sad, during the period commencing on 4 and ending on 30 January 1942, thus during the war, in the course of operations of military armed forces carried out in order to search for and apprehend individuals suspected of being communists and involved in the extremist movement in Novi Said, acting as the commanding officers of the patrols officially appointed by force to search for, gather and accompany individuals, as well as of the gendarmerie squads involved [...] urged their subordinates during the operations of the armed forces in the former Southern Hungary (today Northern Serbia) by common consent to commit crimes by wilful breach of their official duties and in particular to carry out murders, this way consciously becoming perpetrators of the process wherein the regular cleansing by armed forces ordered by top officers degenerated into systematic massacre, brutality and looting, during the course of which soldiers and gendarmes on duty executed individuals in large numbers, and thus altogether ca. 3,309 civilian individuals, including 141 children and 296 old men and women, were murdered."*

The judgement, extending to 218 pages in total, expounds with particulars in connection with the examination of responsibility as follows: *"Dr. Sándor Képiró pleaded in his defence that he had arrived on 20 January 1942 together with the Student Company of Makó to Novi Sad, where Gaál gendarmerie lieutenant-colonel described the situation to them. He concluded from this information that it was not a regular raid of armed forces that was being*

*planned, but that it was definitely a retributive and cleansing operation that was to be carried out. Therefore, he asked him to put down also in writing such oral instructions. However, gendarmerie lieutenant-colonel Gaál refused to give such instructions in a separate written command, stating that the instructions were given by top officers and that therefore they could not be given in writing. [...] One of his patrols reported that he had used firearms in order to avert a violent attack. However, he failed to inquire into the circumstances of the use of firearms, because he had no time to do so. [...] In connection with the case of the Máriási brothers, he pleaded in his defence that the people in the neighbourhood had claimed that the persons in question had put up resistance with weapons against the Hungarian troops at the time of the march of the Hungarian Army to Novi Sad in April 1941. He was unable, in view of the information that had to come to light incriminating them, to accept the reassurance offered by non-commissioned police officer János Kárpáti as a relative. He could not have known that rather than being brought before the verification committee, the persons in question had been taken to the river bank and executed." (Pages 196-197)*

*In its judgement, the military tribunal examined and rejected the defence of Dr. Sándor Képiró, as "he was himself aware of the illegal nature of such actions, and he took part in them nonetheless; it is indisputable that he had agreed to do so, and that he intentionally advanced the committing of the crime constituting the charge." His pleading in defence in connection with the Máriási brothers was also rejected, as "there was no reason for them to be arrested. [...] Based on the foregoing, the military tribunal took it as proven that he too had intentionally participated in the execution of the raid, as an act of retribution, based on his own decision and in league with his accused companions." (Pages 198-200)*

*It is expressly set forth in the judgement that "there is a close chain of causality between the activities of all accused persons and the executions carried out in the former Southern Hungary (today Northern Serbia) in large numbers, as well as the lootings and other breaches of law. Consequently, during the operations carried out in the former Southern Hungary (today Northern Serbia), ca. 3,309 individuals lost their lives without resistance or a fight, through the application of a totally unwarranted law of the jungle. Furthermore, they also caused damage to the property of the Treasury in the amount of 9,327,930 pengo, and in addition, extremely numerous other breaches of law. [...] These series of crimes were committed by the accused individuals in a premeditated and systematic manner, using all members of the troops of the armed forces and*

*the tools and materials on the defence treasury train that was at their disposal.”*  
(Pages 204-205)

**The minutes** submitted by the accused, dated 20 October 1948 in Szeged, **taken of the hearing of János Nagy as a suspect**, contains the following views he expressed on Dr. Sándor Képiró: *“Around 11 o’clock on the third day of the raid, on my way on patrol, we were walking with a gendarmerie lieutenant named Képiró in Rákóczi street when we met a group of prisoners and at the same moment the tea vehicle of the army headquarters arrived there, the driver of which was asked by lieutenant Képiró whether he would take as many prisoners as he could in his vehicle to the river bank designated as the place of execution. When the driver agreed to do so and ca. 30 persons were herded onto the vehicle, I told lieutenant Képiró to accompany the cargo. I sat next to the driver and took the people to the sports ground, where I found the firing squad having a rest, whose commander [...] I instructed to execute the persons sitting on the vehicle. The person in question merely asked whether these people were partisans and I responded yes. They drove the people to the place of execution where all of them were executed with a burst of fire that lasted approx. two minutes.”*

The private prosecutor disputed the genuineness and the content of the aforesaid documents. He suggested that it is a generally known fact that the factual content of the documents prepared before the State Security Authority is completely unreliable, and that the evidence given by the suspect submitted by the defence – although no such stamp can be seen on it – was prepared during such a process. In support of the aforesaid, minutes of the hearing taken in respect of a suspect in Szeged on the 14<sup>th</sup> day of October 1948 was enclosed. The aforesaid evidence is *inter alia* included in said minutes substantially word for word, and the round stamp of the State Security Office of the Ministry of the Interior can be seen at the end of it. He suggested that the judgement was also a forgery; it bears neither signatures nor stamps; its origin is unknown and was presumably “cut and pasted” later on. No evidence was enclosed to support his latter suggestion. However, given that in his evidence taken in court and in his written declarations the private prosecutor describes the process of his sentencing in 1944 in the same way as is set out in the deed, in terms of its form and content the judgement is a continuous and coherent text written in Hungarian; therefore no concerns arise, concerning it, to the effect that it may be a forgery.

In addition to the falseness of the instruments in form, the private prosecutor also pointed out, as a historical fact generally known, that the military

tribunal sentenced in 1944 the gendarme officers in a show trial in the absence of evidence, and he also referred to the fact that the judgement was otherwise annulled and the gendarmes concerned were exonerated. Although the annulment of the judgement, and the legal effect thereof, was not supported by documentary evidence (judgement passed at a retrial, ruling of invalidation), in the light of other evidence it is clear that it must in fact have occurred.

The **Metropolitan Court of Budapest** carefully examined **in case number 9.Beü.969/2006** the genuineness and the subsequent legal fate of the judgement in connection with the enforceability thereof. As a result of the research in the Public Records Office of Military History, it was ascertained that Dr. Sándor Képiró had been replaced in his rank as of the 18<sup>th</sup> day of February 1944 under Section 45 of the Affairs of Honour Regulations. This provision of the law regulates the legal remedy that may be used by the Chief of Staff of the Hungarian Army during retrial. Based on the foregoing, the Metropolitan Court of Budapest arrived at the conclusion that a new judgement was passed in favour of Dr. Sándor Képiró as a result of a military criminal retrial or a complaint for annulment filed for legal uniformity, and consequently the former judgement must have ceased to have legal effect, and this is the reason that its enforceability cannot be ascertained.

The **expert opinion of a historian** given by **Dr. Sándor Szakály**, obtained in the case conducted in relation to enforceability, discusses the available evidence related to this matter in detail. The Court of the Chief of Staff of the Hungarian Army sentenced Dr. Sándor Képiró to 10 years of penal servitude and to 10 years of loss of office, as well as to the same number of years of suspension in the exercising of his political rights, and to demotion. The enforcement of the verdict was begun. Following the occupation of Hungary by the Germans, the general commissioner with full powers of the German Reich in Hungary, Dr. Edmund Veessenmayer, demanded of Döme Sztójay, the Prime Minister, the definitive termination of the trial in Novi Sad and the full exoneration of the Hungarian officers accused. It cannot be seen in the sources available what happened after this – trial cancellation / clemency can be assumed as the likely outcome from secondary sources – but a decree issued by the Chief of Staff dated 5 May 1944 certifies the change in the status of the convicted. In his expert opinion given in the criminal process pending contemporaneously against Dr. Sándor Képiró, the expert confirmed that during the "raid" in the former Southern Hungary (today Northern Serbia) his superiors lost control of events, which, taking on truly tragic dimensions, resulted in the taking of the lives of hundreds of people. Notwithstanding the opinion of the Minister of the Interior and his own public prosecutor, the Chief of the Staff of



the Hungarian Army brought an action in the matter on the charge of "disloyalty". Dr. Sándor Képiró might have committed a breach of obligation, but it was not within his rights to give an instruction "to murder", and the expert does not think that his responsibility can be established. He also suggests that it has not yet been clarified whether the executions were carried out by the members of the Hungarian Army or the Gendarmerie.

On the strength of the aforesaid evidence, the court declared as a fact that Dr. Sándor Képiró had been sentenced in 1944 on account of his role in the raid in Novi Sad; however, it did not take a position on whether such verdict had been correct or incorrect, lawful or unlawful. It was also declared as a fact that under circumstances that can no longer be determined precisely, this judgement was invalidated after 19 March 1944. Beyond this, the court did not examine whether the facts set forth in the judgement had taken place or not, and the criminal responsibility of Dr. Sándor Képiró.

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Of the various **legal arguments**, the Court wishes to highlight the following:

The objective of this process is to investigate whether the accused has stated facts that are potentially damaging to the reputation of the private prosecutor before other person or persons. According to Subsection 179(1) of the Hungarian Criminal Code, a person is said to be committing the crime of defamation if he or she states or rumours such fact as has the potential to damage the reputation of someone before another person, or uses an expression that directly refers to such fact.

The Supreme Court previously developed a practice to the effect that since the true or untrue nature of the claim that is potentially damaging to a person's reputation is not an element in the facts of a case, any factual error with a bearing on the truth of the claimed fact is not relevant in terms of guilt; for the purpose of establishing intent, it is sufficient for the perpetrator to be aware that the fact claimed has the potential to damage a person's reputation. If the conditions set forth in the law for proving the truth exist, in contrast to the basic principles pertaining to the burden of proof and the presumption of innocence, any failure of proof for any reason whatsoever shall be attributed to the accused [BH 1999/540.]

The European Court of Human Rights (hereinafter: Strasbourg Court), in several decisions, dealt with the collision of the right to freedom of expression and opinion with the right to good reputation, and the related norms in criminal law.

In the case of **Lingens v. Austria** (1986), the Strasbourg Court cited that the right to freedom of expression and opinion – as protected in Article 10 Section 1 – constitutes one of the fundamental principles of a democratic society, and comprises one of the essential prerequisites of self-actualisation on the part of each individual. In marked contrast to the legal practice of the Supreme Court mentioned above, the Strasbourg Court declared that it regards the fact that it falls to the accused person to prove that his or her statements are true to be, in itself, a violation of Article 10 of the Convention.

In the case of **Thorgeirson v. Iceland** (1992), the Strasbourg Court expounded that the right to freedom of expression shall be exercised in compliance with democratic principles, one shall act in good faith in respect of the legitimacy and the genuineness of the statement, which shall be expressed in a way that is compatible with democratic objectives, and the statements must successfully support such objectives with facts that underlie them.

In the case of **Fressoz and Roire v. France** (1999), a judgement was passed against the applicant by a French court, because in connection with social unrest in an automobile factory, in addition to publishing the tax returns of the managing director of the factory, a statement was made in a news article that the director had raised his own salary by 45.90% over two years. In relation to the sentencing of the journalist on account of libel, the Strasbourg Court also established the violation of the Convention, as the aim of the applicant was not to damage the good reputation of the managing director, but to initiate an extensive dispute regarding a current issue concerning the public.

An official report of a seal hunter lay at the background of the case of **Bladet Tromsö v. Norway** (1999), based on which a newspaper reported on the abuse of animals, the violation of the prohibition on seal hunting and the committing of other crimes, by naming the crew members of a specific boat in some detail. The Strasbourg Court stated *inter alia* in this decision that the applicant could with good reason have relied upon the official report without conducting an independent inquiry into whether its content was true and correct.

The more recent judicial practice that has arisen based on these decisions puts the adjudication of the facts claimed and the value judgements under criminal law in a totally different light as compared to the former restrictive interpretation by the Supreme Court. Evidently, it cannot be expected from the accused to provide objective evidence regarding the allegation constituting the subject-matter of this case – that is, the guilt of the private prosecutor – which is in conformity with the trial system and to a degree that is required from a public prosecutor during a criminal procedure. This would be an unjustified restriction on the freedom of expression of the accused, and would effectively set requirements for the accused that cannot be met. There is no private individual or civil organisation that would be supported by the law enforcement agencies and the judiciary branch of the State using all of its resources and the means at its disposal. According to the restrictive interpretation, the accused would only be relieved of criminal liability in respect of his allegation that the private prosecutor is a war criminal – as such allegation is clearly suited to the damaging of the person's good reputation – if he provided evidence of the objective truth thereof, that is, if he presented a final and binding judgement beyond all doubt regarding the guilt of the private prosecutor. In fact, as is shown by this process, even a judgement such as this may be disputed, as even a legally binding judgement may not necessarily be recognisable and enforceable in every case, and could potentially be disputed by the other party.

In examining whether the criminal responsibility of the perpetrator claiming a fact that has the potential to damage a person's good reputation may be established, the court must conduct **a test consisting of three steps**:

**(1)** As a first step, it must be ascertained whether it is admissible to evidence the truth at all. As is provided in Subsection 182(2) of the Hungarian Criminal Code, the proof of the truth can be authorised if the stating or rumouring of a fact, or the use of an expression directly referring to such fact, is/are justified by the general interest or by the legitimate interest of any person. The claiming of facts without the existence of an interest that can be appreciated in terms of law – even if such facts prove to be true – infringes upon the person's right to good reputation, and thereby human dignity, without opposing another fundamental right, general interest or legitimate private interest.

**(2)** As a second step, such data, information and items of evidence need to be examined based on which the accused has made his statement. The claiming of facts originating from mere gossip, unfounded rumours without any basis in fact – especially if the subject thereof is a public figure – may not receive constitutional protection. Such statement may unjustifiably violate the human dignity of the aggrieved person. However, if the statement can be decisively

regarded as being well founded in respect of its substance, it is possible to move on to the third level of the examination. The degree to which the statement is well founded greatly depends on the relationship between the aggrieved person and the perpetrator, and the nature of such statement. The court must decide on a case-by-case basis whether or not the statement challenged was sufficiently well founded.

**(3)** At the third level of the test, the court must receive an answer as to whether the perpetrator has proceeded in good faith or not. Even if an interest that can be appreciated in terms of law exists, in connection with a statement made in the possession of well founded evidence, it may also be the case that the objective of the perpetrator was still essentially to damage the reputation of the aggrieved party. The rude wording of the statement, any excessive exaggeration of the truth, or even the degrading nature of the form and method of communication may be indicative of such objective.

In this particular case, the court entertained the evidencing of the truth, as on the one hand the general interest, and on the other hand the legitimate private interest of the Simon Wiesenthal Centre, were at stake in establishing whether private prosecutor Dr. Sándor Képiró was indeed a war criminal. It is beyond dispute that there is a strong societal need for Hungary to face its own past, to bring to light the cruelties committed in the past, and to name those responsible for such. The Simon Wiesenthal Centre was specifically set up to bring to justice those who were responsible for the crimes against humanity that were committed during the Second World War. The accused made his statements on behalf of the said organisation and with an eye to the stated objective of the organisation.

After examining the evidence presented by the accused, the court has found that the facts claimed, and the value judgement regarding the responsibility of the private prosecutor, were decisively well founded as regards the substance thereof. There was a judgement in his possession stating that in 1944 – before Hungary was occupied by the Nazis – the military tribunal of the Hungarian Royal Army – as appears from the documents, in a lawful procedure, in a justification of its decision, and refuting the arguments of the defence – granted an order declaring private prosecutor Dr. Sándor Képiró and his companions responsible for the acts of cruelty committed in Novi Sad involving the taking of life. Regardless of the fact that this judgement was later found to be unenforceable, and regardless of whether this or other evidence will suffice, in the criminal case pending at present, to establish the criminal responsibility of Dr. Sándor Képiró, the court has found that the statement of the accused is sufficiently well founded.

The fact that, in a process and with legal instruments that are no longer known, a judgement that was otherwise legally binding and had begun to be executed was subsequently invalidated under pressure from the German occupiers of Hungary after 19 March 1944, and that for this reason a doubt arises in 2007 as to its validity and enforceability, can by no means be counted against the accused. Even the Metropolitan Court of Budapest was only able to clarify this to a certain degree, through extensive substantiation and with the involvement of an expert historian, and it does not change the fact that Dr. Sándor Képiró had, after all, previously been condemned. The Metropolitan Court of Budapest made no statement as to the reason for the invalidation of the judgement, and thus the accused was able to state the facts as founded even with full knowledge of such decision.

The statement is not rendered unfounded by the fact, either, that the accused mentioned a judgement that had been passed in 1946 by a people's tribunal, and that instead the judgement had been made in 1944 and by a military tribunal. It does not affect the substance of the case, as basically the statement had the potential to damage the person's reputation when the accused called the private prosecutor a condemned war criminal.

In relation of the third step in the test, it is worth noting that the accused did not immediately turn to the press, but first submitted his proof to the Investigation Department of the Public Prosecutor's Office in order to initiate the enforcement of the judgement. When it was unsuccessful – with the knowledge that states generally seem to be less willing to institute proceedings against elderly citizens on account of actions committed in bygone days and long forgotten – the accused went public. His intention was unambiguous: to reveal the truth, and to put pressure on the state, rather than to humiliate the accused. His statement was pretty much precise and accurate, and was not exaggerated and did not overstate the responsibility of Dr. Sándor Képiró at all. His good faith, required under the judicial practice in Strasbourg, is thus ascertainable.

In its resolution 30/1992 (V.26.) AB, the Constitutional Court stated that criminal responsibility is *ultima ratio* in the regime of legal responsibilities: it can be applied only if the sanctions of other branches of law (e.g. a human rights trial, correction, etc.) are no longer of any help. It is justified to use the set of tools available under criminal law only if absolutely necessary, and to a proportionate degree when the restoration of the law and the ethical order violated requires that the tools of criminal law be applied. In this case, the court is of the view that the freedom of expression of the accused granted under Subsection 61(1) of the Constitution and, furthermore, his freedom of scientific research as a historian, had violated the fundamental right to good reputation of Dr. Sándor Képiró in a way that was not disproportionate or unwarranted.

The court, ***in the absence of a crime***, has ***acquitted*** Dr. Efraim Yaacov Zuroff, the accused, of the charge of the crime of defamation – under its formal legal definition: as being committed on a continuous basis and in public – brought against him under Subsection 331(1) of the Criminal Proceedings Act, in conflict with Subsection 179(1) of the Criminal Code and defined as such under Subsection 179(2) paragraph (b) of the Criminal Code.

The court has rejected the motion of evidence submitted by the private prosecutor for hearing Dr. Sándor Szakály, historian, at a hearing, as it is not the guilt or innocence of the private prosecutor that is the subject of this case; the circumstances of how the judgement was passed in 1944 and annulled later on, and the criminal responsibility of the private prosecutor, are only tangentially the subject of these proceedings; related necessary evidence is otherwise available, such as the expert opinions of the said historian submitted in writing. The court has rejected the motions for suspending the proceedings for the same reasons. The criminal responsibility for the statements made by the accused in 2007 is not subject to the outcome of the criminal proceedings pending against Dr. Sándor Képiró in 2011.

The court did not accept the reference of the defence to the expiry of the statute of limitations, due to the fact that the investigation ordered on 15<sup>th</sup> May 2008 interrupted the limitation period, with the first personal hearing being held on 2 February 2010.

The criminal costs incurred cover the fee of the interpreter and the costs of translation, which shall be borne by the State pursuant to Subsection 339(2) of the Criminal Proceedings Act. The private prosecutor, being the unsuccessful party, shall be liable for his costs under Subsection 514(1) and Subsection 339(1) of the Criminal Proceedings Act.

Budapest, 3 May 2011

*(signed by:)*

Dr. Viktor Vadász

Judge

In witness whereof:

*(stamped by the Central District Court of Pest)*