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In an appeal procedure in the case of the Prosecutor plaintiff acting by way of the Office of the Metropolitan Appellate Prosecutor (1055 Budapest, Markó utca 27.) started with the aim of ordering Jeruzsálemi Szent János Szuverén Máltai Lovagrend Autonóm Perjeségeinek Szövetsége Magyar Lovagjai Országos Egyesülete (National Association of the Hungarian Knights of the Sovereign Order of Saint John of Jerusalem, Knights of Malta, Federation of the Autonomous Pories) (1122 Budapest, Goldmark Károly utca 35.), represented by law office Muskovszky és Társai Ügyvédi Iroda (contact: attorney-at-law Dr. Gábor Muskovszky; 1037 Budapest, Szépvölgyi út 113.) to restore the legal compliance of their operation, based on the appeal of the Prosecutor (filed by the Budapest High Prosecutor's Office under serial number 13. and maintained by the Metropolitan Appellate Prosecutor's Office under No. Pf. 4) against the No. 71.P.22.770/2013/11 judgement of the Court of Appeal of Budapest dated 21 January 2014 the Court of Appeal of Budapest has adopted the following

judgement

without holding a hearing.

In regard to the main subject of the lawsuit the Court of Appeal of Budapest upholds the judgement of the court of the first instance, while partly modifying the order concerning the costs of proceedings it removes the obligation of the plaintiff to pay the cost of proceedings.

The court orders the state to pay to the defendant an amount of HUF 15,000 (fifteen thousand forints) + in first and second instance costs of proceedings.

The unpaid HUF 48,000 (that is, forty eight thousand forint) appeal procedure duty is borne by the state.

No appeal may be lodged against the ruling.

Justification

In the clarified claim statement the Prosecutor requested that an obligation be imposed, with setting a time frame, on the supreme body of the defendant to have the organisation restore the legal compliance of its operation by removing from its name – by amending its charter – the words “Order of Knights of Malta” and the reference and expression to “Maltese Knights” from the name, purpose and activities of the organisation so that the existence, operation and name of the organisation is not contrary to the provisions of Act CXL of 2010 on the promulgation of the Cooperation Agreement between the Government of the Republic of

Hungary and the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta.

The counter-claim filed by the defendant requested that the court should reject the plaintiff's claim. The defendant referred to the fact that the defendant organisation had been registered by the Budapest Metropolitan Court before the promulgation of the act underlying the claim and the act cannot have a retroactive effect therefore it is not obliged to modify its charter. The defendant also pointed out that the title "Maltese Knight" used by the organisation has a historical perspective the use of which cannot be banned by a bilateral agreement signed by a state. The defendant challenged the assertion that the act specified by the plaintiff as being the basis of its claim contains a provision on the basis of which the charter of the organisation that is in operation should be modified. The defendant argued that all of its symbols and symbolic names substantially differ from the name of the Sovereign Maltese Order of Knights and the symbols used by the Order.

In its judgement the court of the first instance turned down the claim and ordered the plaintiff to pay HUF 12,700 in costs of proceedings and in relation to the unpaid HUF 36,000 procedural duty it declared that it would remain to the debit of the state.

In the justification attached to the judgement the court of the first instance found it as a fact that the defendant association had been registered by the Budapest Metropolitan Court on 9 January 2007 and that the Court's decision became final and definitive on 14 February 2007 since when the defendant association's name and activities have remained unchanged. In regard to Act CXL of 2010 on the promulgation of the Cooperation Agreement between the Government of the Republic of Hungary and the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta the court explained that the provisions set out in Section 12 (2) of Act XI of 1987 on legislation in force at the time of its adoption and that Section 2 (1) and (2) of Act CXXX of 2010 on legislation that has been in force since 1 January 2011 provides that a statutory provision cannot establish an obligation or declare any behaviour non-compliant in regard to the period preceding its entry into force. The court of the first instance stated that Act CXL of 2010 that entered into force on 1 January 2011 contains no regulations concerning already established civil society organisations, associations or foundations and it imposes no obligation on such organisations to modify their charters in accordance with the law, or to refrain from "Maltese Knight" activities or the use of the "Maltese Knight" designation. Since Act CXL of 2010 has no retroactive effect and it does not provide for any future obligation for already registered civil society organisations it found the plaintiff's claim for the defendant's restoring of the legal compliance of its operation to be unfounded, also with regard to the fact that there was no statutory regulation in force according to which the court should order the defendant to modify its charter in order to restore the compliance of its operation. The court found that the defendant had been registered compliantly in 2007, the defendant was not operating non-compliantly and its activities were not contrary to the statutory regulation indicated by the plaintiff, the defendant was not abusing the title "Maltese Knight" and that the defendant's "Maltese Knight" activities did not constitute any abuse either. The court of the first instance also noted that the content of what is referred to as "Maltese Knights' activities" had not been quite clearly defined in the first place, and in the absence of statutory regulations to that effect the defendant was not banned from assisting those in need or from performing humanitarian activities. The principle of the exclusivity of names and of the validity of names is observed upon the registration of civil society organisations, it had been verified by the court in an out-of-court procedure before registration therefore in its view it is not possible to argue subsequently with reference to the principle of the exclusivity and validity of names in

relation to an already established and registered civil society organisation. Based on the above considerations the court rejected the claim. In regard to the ruling on the costs of proceedings it referred to Section 3 (3) and Section 4/A (1) of Decree 32/2003. (VIII. 22.) IM and Section 14 of Decree 6/1986. (VI. 26.) IM, both adopted by the Minister of Justice.

The Prosecutor lodged an appeal against the first instance judgement. In its appeal the plaintiff requested that the judgement be changed and that the defendant should be ordered to restore the compliance of its operation as requested in its claim in the first place, and it also requested that the order concerning its bearing of the costs of proceedings be dropped. The plaintiff argued that the justification attached to the first instance judgement contained no substantial position statement concerning the legal grounds underlying the claim statement. It emphasised that pursuant to the provisions contained in the agreement promulgated by Act CXL of 2010 Hungary recognised the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta as “Maltese” Knights Order therefore those applying and enforcing the law in Hungary cannot regard anybody else as Maltese Knight but the international entity recognised by law, along with the members of the organisations actually associated with it and that on the basis of an international commitment only the organisations specified in the agreement may perform activities relating to the subject matter of the agreement in a way that can be associated with the activities of the Sovereign Maltese Order of Knights. The plaintiff argued that the name and the purpose of the defendant as specified in its charter and its concrete activities shown on its home page clearly do not meet this requirement. The plaintiff argued furthermore that it is not possible to refer to the rule of the prohibition of retroactive effect because the rules of the act on legislation referred to by the court of the first instance cannot be applied to the provisions of the agreement; the statutory provisions specify the new legal environment clearly with regard to the future, laying down the rules on the use of the title “Maltese Knight” and on the exercising of the activities performed in the context of such title. Moreover, the name and the effective charter of a civil society organisation must ensure the compliance of the operation of the civil society organisation not only at the time of its establishment but also in the prevailing regulatory environment as may be modified from time to time. In this regard the plaintiff referred to Section R) (2) of the Basic Law and the provisions set out in Section 28 of the same in view of which the operation of the defendant was not in line with the provisions contained in the agreement. The plaintiff argued that by use of its name and by the application of the provisions set out in its charter already referred to in relation to its activities, in the course of the performance of its activities of any purpose the defendant appears to be performing its activities when carrying out its tasks, in connection with the Sovereign Maltese Order of Knights. Accordingly, neither the name, nor the relevant statutory provisions meet the requirement of the validity of the name as prescribed in Section 36 (2) of Act CLXXXI of 2011. The plaintiff explained that changes in the regulatory environment may make it necessary for a civil society organisation to change its name and/or the rules of its activities. The plaintiff cited several examples to prove this point. In view partly of the prosecutor’s right to check legal compliance as specified in Section 11 (1) and (2) of Act CLXXV of 2011 the plaintiff argued that meeting the requirement of the validity of the name can be checked not only at the time of the registration of an organisation but also on a continuous basis, during the whole of the period of its operation. The plaintiff contested the ordering of the payment of the costs of proceedings by filing the appeal because it was contrary to the provisions laid down in Section 78 (3) of the Rules of Civil Procedure (Pp.)

In its counter-claim in the appeal proceedings the defendant motioned for the upholding of the first instance judgement on the basis of its justification. The defendant emphasised that Act

CXL of 2010 comprised an agreement according to which the Government of the Republic of Hungary cooperates with the organisations designated in the act; it does not prohibit the performance of activities similar to the humanitarian activities of the Maltese Order of Knights. The defendant saw no difference for the members of society between the humanitarian assistance received from the Charity Service of the Order of Malta and those received from any other Maltese Order of Knights. The defendant argued that the essence lies in support and assistance therefore it even found the plaintiff's claim to be beyond comprehension besides the faulty legal reasoning.

According to the arguments set out below only a minor part of the appeal is well-founded.

Pursuant to Section 256/A (1) f) of the Rules of Civil Procedure the Court of Appeal of Budapest informed of the adjudication of the appeal without holding a hearing. The plaintiff had not requested a hearing to be held. The defendant's counter-claim in the appeal procedure requesting the holding of a hearing had been received by the Court of Appeal of Budapest beyond the relevant deadline according to Section 256/A (3) of the Rules of Civil Procedure therefore defendant's request for the holding of a hearing that had been received beyond the deadline could not be taken into account. For this reason the Court of Appeal of Budapest adjudicated the appeal against the first instance judgement without holding a hearing.

Pursuant to Section 11 (1) of Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations (Ectv.) the prosecutor's office exercises legal compliance control over the operation of the defendant in accordance with the provisions set out in the act on the prosecutor's office with the differences specified in Act CLXXV of 2011 and in the Civil Code. Accordingly, pursuant to paragraph (2) it checks whether its internal self-governance regulation and its amendments are in line with the relevant statutory regulations and the deed(s) of foundation, whether its operation, resolutions and the decisions taken by the decision making body are in line with the applicable statutory regulations, the deed of foundation or other internal self-governance regulations.

According to Section 11 (3) of Act CLXXV of 2011 if the legal compliance of the operation of a civil society organisation cannot be ensured otherwise, acting in exercise of its compliance verification power the prosecutor may file a claim with the court. The court reviews the claim and, pursuant to sub-paragraph b), it convenes the decision making body to restore the compliance of the operation or orders the decision making body to restore the compliance of the organisation's operation within a specific time frame, notifying all this to the elected supervisory body of the organisation as well.

The plaintiff put forth its claim pursuant to the statutory provision quoted above arguing that the defendant's operation is non-compliant because its name, charter, purpose and activities are contrary to Act CXL of 2010 on the promulgation of the Cooperation Agreement between the Government of the Republic of Hungary and the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta.

Act CXL of 2010 was promulgated on 7 December 2010 and entered into force on 1 January 2011. The court should have investigated – on account of it being bound to the claim statement and for other reasons – whether the agreement promulgated by act CXL of 2010 applied to the operations of the defendant and whether the operations of the defendant were in breach of the provisions of that agreement. It had never been disputed that at the time of its registration as an association the defendant did meet the requirements set out in the statutory regulations in force at that time. The statutory provisions on legislation cited in the first

instance judgement in connection with Act CXL of 2010 had no material impact on the adjudication of the legal dispute. It had not been disputed that the agreement promulgated by Act CXL of 2010 contained no retroactive provisions and that the subject matter of this lawsuit had not been and could not have been whether Act CXL of 2010 was in line with the act on legislation. Therefore in this round the court of the second instance found the contents of the justification underlying the first instance judgement to have been irrelevant and not relating to the adjudication of the legal dispute.

The appeal rightly referred to the fact that the operation of the association must be in compliance with the statutory regulations applying to it at any point in time. Consequently, the prosecutor's office has a power to oversee the lawfulness of the operations of the association not only on the basis of the statutory regulations in force at the time of the registration of the association but it also has a power to check its compliance with the applicable statutory regulations at any point in time and if the association's operations are not in line with the prevailing rules, it may file a claim as specified in Section 11 (3) b) of Act CLXXV of 2011. In the course of its operations the association not only has to comply with the provisions set out in Act CLXXV of 2011, Act CLXXXI and the Civil Code but also the applicable rules in other pieces of legislation. Accordingly, not only the statutory regulations in force at the time of its registration apply to the association and its activities; pieces of legislation entering into force after its registration also affect the functioning of the association and they may even affect the requirements of the exclusivity of names, the validity of names and the accuracy of names.

Section 35 (2) of Act CLXXXI of 2011 on the registration by the court of civil society organisations and the relevant procedural rules (Cnytv.) provides that it is in the registration procedure that the court examines *ex officio* whether the name chosen by the organisation concerned meets the requirements of the exclusivity of names, the validity of names and the accuracy of names. The requirement of the validity of the name means – in view of the provisions set out in Section 36 (2) of Act CLXXXI of 2011 – that an organisation's name must not contain any expression that is suitable for misleading anybody in relation to the significance or the operation of the organisation. This applies to the organisation's operation as well, accordingly, the name must not be suitable for misleading people in regard to the organisation's operation either, accordingly, it is not impossible that as a consequence of some circumstance occurring or some change in the applicable statutory regulations introduced in the course of the organisation's operation at a later stage its name or an element of its name becomes such that it is contrary to the requirement of the validity of the name. Therefore in its appeal the plaintiff argued that an assessment of the validity of the name may become necessary even in the case of an already registered and operating organisation in view of changes that have occurred in its circumstances in the meantime in the course of its operation.

Accordingly, in line with it being bound by the contents of the statement of claim the court had to examine in the course of this lawsuit in the merits whether the name, purpose and so the operation of the defendant is contrary to the agreement promulgated by Act CXL of 2010. Act CXL of 2010 contains no express obligation concerning already registered associations, it does not impose a mandatory obligation on them to modify their charters or names and nor does it impose any other obligations on them. The agreement assigns the tasks required for the accomplishment of the humanitarian missions of the Sovereign Maltese Order of Knights to specific designated organisations listed in Section 1 b) of the Act. The subject matter of the agreement is the future cooperation between the contracting parties as specified in Section 2

(1) and it establishes scopes of powers for the designated organisations pursuant to Section 4 (1). These provisions however, do not, in themselves, rule out the possibility of other civil society organisations or associations performing activities carried out by the Maltese Order of Knights or of other organisations also working on humanitarian missions represented by the Maltese Order of Knights. Even according to its preamble the Agreement designates only organisations participating in the practical implementation of the missions of the Maltese Order of Knights. This designation however, does not mean that no other organisation may perform similar activities. Section 6 (2) of the Act provides that within the framework laid down by international law the contracting parties provide mutual protection for each other against misuse of each other's name, flag, coat of arms or other ensigns. This provision however, prohibits only the exercising of rights resulting in misuse. For this reason failure to meet the requirement of the validity of the name specified in Section 36 (2) of Act CLXXXI of 2011 may only occur in regard to this stipulation of the agreement, i.e. misuse of the name may be in breach of the agreement promulgated by the Act. This had to be proven by the plaintiff.

In specifying its purpose the defendant refers to the constitutional letter of the Maltese Order of Knights and the intents of the original founders of the organisation. The Court of Appeal finds that this is such a general reference that cannot be understood as applying only to those provided for in the agreement, in view also of the fact that the purposes specified in the charter cannot only be regarded as relating to the order that signed the agreement promulgated by Act CXL of 2010. As was also referred to in the course of the lawsuit, the Maltese order of knights is not a term exclusively specifying a clearly defined single legal entity. The defendant has been using its name ever since its registration. For lack of other data the use of this name cannot – even in view of the agreement – be regarded as misuse of a name. In the name of the defendant the federation of the priores of the order of knights, i.e. not specifically the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta that had concluded the agreement but a federation whose Hungarian knights is contained in the name of the association. Accordingly, from this combination of words it is not possible to establish that it would be a reference to the order that is a contracting party in the agreement therefore the name is not suitable for misleading even after the promulgation of the agreement. The court of the first instance therefore drew a correct conclusion that the defendant does not commit an abuse by the use of its name or the performance of its activities, i.e. its use of its name and its activities do not violate Act XCL of 2010.

Having explained the above, the defendant's operation is in compliance with the existing statutory regulations even in the opinion of the court of the second instance, therefore there was no reason for the application of Section 11 (3) b) of Act CLXXV of 2011. Consequently, the decision of the court of the first instance rejecting the claim was correct, with the partial modification of its justification.

The court of the first instance ordered the plaintiff to bear the costs of proceedings but it failed to specify the statutory regulations underlying this decision. The appeal against it is well-founded. The claim was filed by the prosecutor and the claim has been rejected. Therefore Section 78 (3) of the Rules of Civil Procedure applies to the costs of proceedings. Accordingly, if the court has rejected the claim filed by the prosecutor, the state must be ordered to pay the costs of proceedings. Since the costs of proceedings include, according to Section 75 (1) of the Rules of Civil Procedure, all of the costs incurred by the parties (in this case the winner of the lawsuit, that is the defendant) in relation to the conducting of the lawsuit proceedings, in this case the state has to be obliged to pay such costs according to the provisions set out in Section 78 (3) of the Rules of Civil Procedure. The court of the first

instance established the costs incurred by the defendant in the first instance proceedings according to Decree 32/2003. (VIII. 22.) IM issued by the Minister of Justice. The costs of proceedings comprised in this lawyer's cost and its amount was not contested in the appeal therefore it was not dealt with by the court of the second instance. Pursuant to Section 78 (3) of the Rules of Civil Procedure the plaintiff cannot be ordered to pay the defendant's costs incurred in relation to the lawsuit, that is the costs of proceedings, therefore this order comprised in the judgement of the first instance had to be dropped by the court, and instead, it had to order the state to pay the costs of proceedings that had otherwise been correctly awarded by the court of the first instance to the benefit of the defendant.

Accordingly, pursuant to Section 253 (2) of the Rules of Civil Procedure applicable according to Section 256/A (6) of the same the Court of Appeal of Budapest upheld the judgement of the court of the first instance in regard to the main subject of the lawsuit and it dropped the ruling ordering the plaintiff to bear the costs of proceedings.

The plaintiff's appeal has failed, therefore Section 78 (3) of the Rules of Civil Procedure applied to the bearing of the costs incurred in the appeal procedure as well. In the appeal procedure the defendant incurred costs in relation to representation by an attorney-at-law, the amount of which is set by the court of the second instance at HUF 5,000 + VAT pursuant to Section 3 (3) and (5) and Section 4/A (1) of Decree 32/2003. (VIII. 22.) IM issued by the Minister of Justice.

In view of the above, since the state had to be ordered to pay the costs of proceedings in both the first and the second instance, this is provided for by the court of the second instance in a single provision.

The court of the second instance adopted its ruling concerning the bearing of the unpaid duty for the lodging of the appeal in accordance with Section 14 of Decree 6/1986. (VI. 26.) IM issued by the Minister of Justice, which is applicable pursuant to Section 74 (3) of Act XCIII of 1990.

Budapest, 11 September 2014.

Dr. László Németh
Chairman of the Council

Dr. Anikó Merőtey
Judge Rapporteur

Dr. Ágnes Molnár
Judge

In witness whereof
Mrs. Imre Récsi
Court Clerk