



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

SECOND SECTION

Application no. 35943/10
Gábor VONA
against Hungary
lodged on 24 June 2010

STATEMENT OF FACTS

The applicant, Mr Gábor Vona, is a Hungarian national who was born in 1978 and lives in Budapest. At the material time, he was the chairman of *Magyar Gárda Egyesület*, an association with its seat in Budapest. He is represented before the Court by Mr T. Gaudi-Nagy, a lawyer practising in Budapest.

A. The circumstances of the case

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

On 8 May 2007 the *Magyar Gárda Egyesület* (Hungarian Guard Association; “Association”) was founded by members of a right-wing political movement called *Jobbik Magyarországért Mozgalom* (Movement for a Better Hungary), with the stated aim of “preserving Hungary’s traditions and culture”.

For its part, on 18 July 2007 the Association founded the *Magyar Gárda Mozgalom* (Hungarian Guard Movement, “Movement”). It is disputed to what extent the Movement constituted an integral part of the Association.

The Movement defined its objective as aiming at “defending Hungary, defenceless physically, spiritually and intellectually”. The tasks undertaken by the Movement included, as listed in its deed of foundation, the physical and mental training of its members, the participation in disaster management and in ensuring public safety as well as the initiation of a social dialogue regarding these issues through public events. Purportedly in pursuit of these goals, its members, dressed in uniforms, subsequently held rallies and demonstrations throughout Hungary, including in villages with large Roma populations, and called for the defence of “ethnic Hungarians”

against so-called “Gypsy crime”. These demonstrations and rallies were not prohibited by the authorities.

One of these demonstrations was organised in the village of Tatárszentgyörgy on 9 December 2007. In reaction to this event, the Budapest Chief Prosecutor’s Office lodged a court action seeking the dissolution of the Association for its abuse of the right to freedom of assembly and for conducting activities that infringed the rights of the Roma through generating fear among them by speeches and appearance, i.e. by uniforms, military formations and commands. The Prosecutor’s Office was of the view that the Movement constituted a division of the Association, and indeed its activity represented a significant part of that of the latter.

In the ensuing litigation, the Association claimed, however, that there were no such organisational ties between itself and the Movement as amounted to a unity of the two; accordingly, it argued that it bore no responsibility for the Movement. It also stated that, in any event, the Movement’s activity did not represent any objective danger to anyone. According to the Association, on the one hand, the subjective feeling of fear could not have given rise to any limitation on fundamental rights, including the freedom of assembly. On the other hand, the Movement’s conduct had not been intimidating if regarded objectively.

On 16 December 2008 the Budapest Regional Court ruled in favour of the Prosecutor’s Office and disbanded the Association. The court did not accept the arguments concerning the distinction between the two entities and held that a “symbiotic relationship” existed between them. It declared that the principal activity of the Association had been the foundation, operation, guidance and financing of the Movement.

The legal effect of this judgment was limited to the dissolution of the Association; since the Movement did not have any legal personality, the judgment did not directly extend to it.

The court declared that, despite its stated purpose, the actions of the Association had violated Hungary’s law on associations and created an anti-Roma atmosphere. According to the court, the verbal and visual demonstration of power alone amounted to an infringement of the law, in view of historical experience; and thus for the Association to be dissolved, it was not necessary to commit any actual offence.

On 2 July 2009 the Budapest Court of Appeal upheld the judgment of the Regional Court, also considering two further similar demonstrations of the Movement. However, this court established a closer connection between the two entities, extending the scope of the judgment also to the Movement. The court held that the Association in fact included the Movement as a “unit”; consequently, the judgment concerned both of them. The Association’s dissolution also eliminated the organisational framework of individuals operating within any movements related to the dissolved association.

The court ruled that the selection of demonstration sites, i.e. villages with large Roma populations, could not be seen as social dialogue, but an extreme form of expression within the framework of semi-military force demonstration. The court, while it upheld the arguments of the Regional Court, argued that the population of these villages had had to face, as a ‘captive audience’, these extreme and exclusionary views without being

able to avoid that communication. In the court's view, the events organised by the Movement amounted to a danger of violence, generated conflict, attacked public order and peace and violated the right to liberty and security of the inhabitants of the villages, even if each of the demonstrations, strongly controlled by police forces, had finished without any acts of actual violence.

The court also considered the applicant's freedom of expression. It stated, upholding the arguments of the first-instance judgment and citing case-law of the Court, that this freedom did not cover hate speech or incitement to violence.

On 15 December 2009 the Supreme Court upheld the judgment of the Budapest Court of Appeal. This decision was served on 28 January 2010.

COMPLAINT

The applicant complains under Article 11 of the Convention that the dissolution of the Association violated his freedom of assembly. According to him, there were no such organisational ties between the Association and the Movement as incurred the responsibility of the former for demonstrations organised by the latter. Nevertheless, even assuming the unity of the two, their activity did not jeopardise public order or the rights and freedoms of others.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right to freedom of peaceful association, contrary to Article 11 of the Convention, in view of the fact that the association chaired by him was dissolved – and this on account of the acts of an arguably distinct entity, the Movement?

2. In particular, on what elements did the domestic courts base their view that the actions of the Movement entailed the actual intimidation of Roma citizens and that these actions engaged the responsibility of the association chaired by the applicant (cf. *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, § 89, ECHR 2009)?