

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

FIRST SECTION

CASE OF SZABÓ v. HUNGARY

(Application no. 29627/19)

JUDGMENT

STRASBOURG

21 November 2024

This judgment is final but it may be subject to editorial revision.



In the case of Szabó v. Hungary,

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

Alena Poláčková*, President*,
Péter Paczolay,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 29627/19) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 May 2019 by a Hungarian national, Mr Szabolcs Szabó ("the applicant"), who was born in 1979, lives in Gyula and was represented by Mr B. T. Tóth, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the sanctioning of the applicant, a member of Parliament, for using physical force, showing a banner and using a whistle during parliamentary voting.

2. At the material time the applicant was an independent member of Parliament (MP).

3. On 27 November 2018 Parliament debated Bill no. T/3628 amending the Labour Code and other related acts to increase the permissible hours of overtime in the private sector. During the general debate, the Speaker of Parliament withdrew the right to speak of a number of opposition MPs. On 8 December 2018 trade unions organised demonstrations in Budapest and on 10 December 2018 about three thousand amendments were submitted to the legislative proposal. The bill was adopted on 12 December 2018.

4. On 12 December 2018 during the voting procedure, in protest against the legislative proposal, opposition MPs blocked the Speaker from accessing his pulpit and conducting the voting procedure.

5. During the session, the applicant used a whistle and displayed a banner stating "Government of multinational corporations". He stood next to the Speaker's pulpit.

6. On 9 February 2019 the Speaker decided, by virtue of section 50 § 1 of Act no. XXXVI of 2012 on Parliament (hereinafter "the Parliament Act") that the applicant's monthly allowance, due that month, should be reduced by

1,069,200 Hungarian forints (HUF, approximately 2,800 euros (EUR)), the maximum amount foreseen by the relevant rules. According to the decision, the applicant had used physical force to hinder the Speaker in conducting the parliamentary session. In addition, by using a whistle and holding a banner, the applicant had gravely offended the authority and operation of Parliament. In addition to the applicant, another twenty-seven MPs were fined for their conduct on 12 December 2018.

7. The applicant challenged the Speaker's decision before the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials ("the Immunity Committee"). He argued that, according to the contested decision, he was fined for having had recourse to physical force to hinder the Speaker accessing his pulpit, whereas in reality he had not been close to the location where the Speaker tried to access his pulpit.

8. The Immunity Committee was scheduled to hear the applicant's case on 26 February 2019 and invited him to present his arguments. However, the Immunity Committee did not hold the meeting due to a disagreement between its members about the agenda. Thus, it failed to reach a decision within the prescribed deadline (27 February 2019).

9. On 28 February the applicant requested that Parliament set aside the Speaker's decision. He maintained his argument that he had had no recourse to physical force and that therefore the Speaker's decision had been unfounded. However, on 4 March 2019 Parliament upheld the Speaker's decision without a debate. The decision maintained the finding that, together with other MPs, the applicant had blocked the access to the Speaker's pulpit by physical force, aiming to obstruct the conduct of the parliamentary session and the operation of Parliament. Moreover, by using a whistle and displaying a banner, the applicant had infringed the authority and orderly conduct of Parliament.

10. The applicant complained under Article 10 of the Convention that the fine imposed on him did not have a legal basis, was disproportionate and served political purposes. Furthermore, he had no access to a fair procedure to challenge the sanction against him.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

11. The Government submitted that the applicant had been fined for the use of physical violence; his other conduct had not formed the basis of the sanction imposed on him and was therefore irrelevant for the assessment of the present case. They contested that the use of physical force constituted an expression of opinion, protected under Article 10 of the Convention. They put forward that the applicant had had numerous opportunities to express his opinion on Bill no. T/3628, including participating in a debate and submitting

amendments, instead of which he had deliberately obstructed the operation of Parliament and abused his right to speak. Blocking the access to the Speaker's pulpit could have led to a serious altercation.

12. The applicant argued that the decision imposing a fine had been based on erroneously established facts since, as evidenced by the recording of the sitting, he had not used violence to obstruct the parliamentary sitting. He had not blocked the Speaker's way to the pulpit and, in any event, the MPs standing around the pulpit had been calm and peaceful.

13. The Court reiterates that Article 10 of the Convention protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). In cases under Article 10, it is possible to declare a complaint incompatible *ratione materiae* with the provisions of the Convention solely if it is immediately clear that the expression in issue sought to deflect this Article from its real purpose by employing the right to freedom of expression to ends contrary to the Convention's values (see *Zhablyanov v. Bulgaria*, no. 36658/18, § 78, 27 June 2023).

14. The Court considers that the impugned conduct for which the applicant was fined was contested by him. In any event, even granting that the applicant obstructed the operation of Parliament, his action does not appear as an incitement to destroy Convention rights and freedoms. It is also clear that the applicant intended to express his objection to the legislative proposal and sought to engage in political protest and "impart" his "ideas" about Bill no. T/3628.

15. The applicant is therefore entitled to the protection of Article 10 of the Convention in the present case. This objection is therefore dismissed.

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

17. The relevant domestic law has been set out in *Ikotity and Others v. Hungary* (no. 50012/17, §§ 14-17, 5 October 2023) and *Karácsony and Others v. Hungary* ([GC], nos. 42461/13 and 44357/13, §§ 28-29, 17 May 2016), while the Constitutional Court's relevant practice and international and comparative law material have been set out in *Karácsony and Others*, cited above, §§ 32-61).

18. In addition, at the material time, the relevant parts of section 50 of the Parliament Act provided that if a member of Parliament used physical violence, threatened to use direct physical violence, incited to violence or obstructed the removal of someone else from the session, the President could propose his/her exclusion from the sitting, the suspension of his/her rights as a member of Parliament or the reduction of his/her allowance.

19. Furthermore, the general principles applicable to the assessment of the interference with applicants' right to freedom of expression were set out in *Karácsony and Others* (cited above, §§ 132-47).

20. In the context of complaints similar to the one in the present application, the Court has considered it appropriate to address two main questions, namely, (i) whether the applicable procedure was accompanied by sufficient procedural safeguards, and (ii) whether [the refusal of permission and] the imposition of a sanction on the applicant were in themselves disproportionate and thus unjustified (see *Ikotity and Others,* cited above, § 33). As regards *ex post facto* disciplinary sanctions, the Court has held that the procedural safeguards available to this effect should include, as a minimum, the right for the MP concerned to be heard in a parliamentary procedure before a sanction is imposed. It noted that the right to be heard would indeed increasingly appear as a basic procedural rule in democratic States, above and beyond judicial procedures. The manner and mode of implementation of the right to be heard should be adapted to the parliamentary context, bearing in mind that a balance must be achieved which ensures the fair and proper treatment of the parliamentary minority and precludes abuse of a dominant position by the majority (*Karácsony and Others,* cited above, §§ 156-57).

21. It should be noted that, at the material time, section 51/A (6) of the Parliament Act foresaw the possibility for a fined MP to seek a remedy and to make representations before a parliamentary Immunity Committee. However, this legislative provision had no effect on the applicant's situation in the present case, as the Immunity Committee did not hold a hearing due to a disagreement among its members about the agenda (see paragraph 7 above). In practice, the procedure in the applicant's case consisted of a written proposal of the Speaker to impose a fine and its subsequent adoption by the plenary without debate, not offering any possibility for the MP to be involved in the relevant procedure, notably by being heard.

22. The Court notes that the applicant's main argument was that the Speaker's decision was based on the erroneous establishment of facts. However, the procedure in the present case did not offer the applicant an effective means of challenging the Speaker's findings and proposal.

23. Having regard to the foregoing, the Court considers that in the circumstances of the case the impugned interference with the applicant's right to freedom of expression was not proportionate to the legitimate aims pursued, because it was not accompanied by adequate procedural safeguards.

24. Accordingly, there has been a violation of Article 10 of the Convention on this account.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 2,820 euros (EUR) in respect of pecuniary damage, corresponding to the fine he was obliged to pay as a disciplinary sanction.

26. The Government contested this claim.

27. The Court finds that the applicant suffered pecuniary loss as a result of the fine that he was ordered to pay. Having regard to the link between the fine imposed in domestic proceedings and the violation of Article 10 found by the Court, the applicant is entitled to recover the full amount claimed. The Court further notes that the applicant made no claims for non-pecuniary damage or for costs and expenses incurred and thus sees no reason to award any sums under these headings.

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, the amount of EUR 2,820 (two thousand eight hundred and twenty euros) to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of pecuniary damage;
   (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 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President