

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

FOURTH SECTION

DECISION

Application no. 81097/12
György GŐBL
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 15 March 2016 as a Chamber composed of:

Vincent A. De Gaetano, *President,*
András Sajó,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 14 December 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr György Gőbl, is a Hungarian national, who was born in 1964 and lives in Sopron. He was represented before the Court by Mr T. Gaudi-Nagy, a lawyer practising in Budapest.

The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

The circumstances of the case

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

On 27 November 2006 the applicant appeared at the main entrance of Erzsébet Hospital in Sopron, for the purpose of demonstrating against Prime Minister Mr Gyurcsány and his government. He held a 100x40 cm placard saying "Gyurcsány to resign! Voluntary contribution pay-desk; minimum 200 Hungarian forints", and he distributed flyers to the passers-by. The applicant had his two children, respectively two and three years old, with him.

Upon a citizen's notice the police appeared to check the applicant's identity. He explained that he had been demonstrating on his own and that was the reason why he had failed to notify the authorities about the demonstration in advance. However, the police officers said he had been committing an infringement and obliged him to terminate the demonstration. The applicant obeyed, put all his belongings into his car and drove to Sopron Municipal Police Department, escorted by two police cars on his way. He did so at the police's request so that the circumstances of the case be clarified. At the Police Department the police seized the objects used for the demonstration and initiated regulatory offence proceedings against the applicant, who left the Police Department two hours later. Although the applicant requested the police officers to take minutes in which he could have indicated his comments and objections concerning the proceedings, the officers refused his request. Later he asked for paper and pen in order to write down his complaints, but to no avail.

On the same day, shortly after his release, the applicant filed a complaint with the Police Department, complaining about the offensive style of communication of the police officers dealing with the incident, and about not taking minutes and not giving him the chance to indicate his objections. The chief officer of the Police Department dismissed the applicant's complaint on 9 December 2006. Upon the applicant's appeal, the Győr-Moson-Sopron County Police Department upheld the decision. The applicant challenged the decision before the Győr-Moson-Sopron County Regional Court but his claim was dismissed.

On 18 December 2006 the Sopron Municipal Police Department, acting as administrative authority, imposed a fine of 50,000 Hungarian forints (approximately 200 euros) on the applicant for the offence of misusing the right to assembly.

Upon the appeal of the applicant – in which he argued that he had not exercised his right to assembly as he was on his own – the Sopron District Court terminated the regulatory offence proceedings against the applicant on 8 January 2007. The court emphasised that the applicant had been exercising his right to freedom of expression but, as he was demonstrating on his own, he could not possibly commit the offence of misuse of the right to assembly.

In November 2009 the applicant lodged an action in damages against the Győr-Moson-Sopron County Police Department, stating that the police had

violated his rights to freedom of expression, to liberty and to human dignity, and claiming non-pecuniary damages in the amount of 500,000 Hungarian forints (approximately 1,700 euros). The applicant argued that by escorting him to the Police Department and retaining him for two hours, the police officers had violated his right to liberty. Moreover, by their offensive style of communication, they had violated his right to dignity. He also asserted that the officers – by virtue of their intervention as such – had infringed his right to freedom of expression. Moreover, the police officers had acted wrongfully when not taking minutes or allowing the applicant to make objections.

On 12 April 2010 the Győr-Moson-Sopron County Court found that the applicant's act was to be considered as expression of political opinion. The Győr-Moson-Sopron County Police Department had violated his right to freedom of expression by seizing the objects used for the purposes of the demonstration. Apart from this, the court dismissed the applicant's claims. Although, as a finding of fact, it was established that the applicant had been called upon to follow the officers to the Police Department, the court found that he had been neither forced to go to the Police Department nor arrested. There had not been any evidence proving that the police officers' action was a coercive measure. The court was satisfied that the applicant had voluntarily driven to the Police Department, that – while inside – he had stayed in a public waiting room and his cell phone had not been seized. The court also noted that the applicant could not prove that his personal documents had been withheld during the time he spent at the Police Department. It had not been proved either that the applicant's right to dignity had been violated. Moreover, his right to a remedy was not infringed by not providing him with a pen and paper on site, as he was able to file a complaint later on. The court dismissed the applicant's claim for non-pecuniary damages since the violation of right to freedom of expression – even if the claim was well-founded – did not, in the court's view, justify the awarding of non-pecuniary damages in the case.

The applicant appealed against the judgment. The Győr Court of Appeal upheld the first-instance court's judgment in essence.

The applicant challenged this judgment before the Supreme Court. In his petition for review he reiterated that the police officers had violated his right to liberty since he had driven to the Police Department because of the express instruction given by the officers and he had not been able to leave the police Department until his ID cards had been restored to him.

On 2 May 2012 the Supreme Court upheld the judgment finding that there had not been any evidence proving that the police officers had pursued any coercive measure against the applicant. On the contrary, the police officers had escorted him to the Police Department because he had requested more information about the legal qualification of his act and that information could only have been provided there. The applicant had driven

to the Police Department voluntarily and had not been deprived of his liberty. Neither could the applicant prove a violation of his right to dignity. Finally, the Supreme Court agreed with the first and second instance courts on the consideration that a violation of the right to freedom of expression – even if the claim was well-founded – did not justify the awarding of damages in the applicant's case.

COMPLAINTS

The applicant complained under Article 5 § 1 of the Convention about being deprived of his right to liberty and security when he had been requested by the police officers to drive the Police Department and to stay there for approximately two hours. He further complained under Article 10 of the Convention about the perceived interference with his right to freedom of expression.

THE LAW

1. The applicant alleged that the fact that he was instructed by the police to report to the Police Department and stay there while the procedure was performed amounted to a breach of his rights enshrined under Article 5 § 1 of the Convention, whose relevant parts are as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> ..."

The Government submitted that the applicant had not been deprived of his liberty. He had reported to the Police Department voluntarily, driving his own car and was not withheld there in any manner contrary to his will. The applicant disagreed, arguing that the police's instruction for him to drive to the Police Department amounted to coercion.

The Court recalls that in proclaiming the "right to liberty", paragraph 1 of Article 5 is contemplating the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting point

must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39).

In the present case, the Court notes that, upon requested to do so, the applicant drove, voluntarily, his own car to and from the Police Department. The courts dealing with the case were satisfied that neither his documents nor his cell phone were withheld and that, while on the premises for some two hours, the applicant had been in a public waiting area. There are no elements pointing to coercion or any intention on the authorities' side to detain the applicant. In these circumstances, the Court considers that the applicant cannot be regarded as having been deprived of his liberty for the purposes of Article 5 § 1 of the Convention. This provision being inapplicable, it follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

2. The applicant also complained that the incident infringed his right to freedom of expression, in breach of Article 10 of the Convention, which reads, in so far as relevant:

> "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. ...
>
> 2. The exercise of these freedoms...may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,... for the prevention of disorder or crime,...[or] for the protection of the... rights of others..."

Article 34 provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Government argued that the applicant cannot claim to be a victim of a violation of his Convention rights in this connection, since the domestic courts had acknowledged that his right of freedom of expression had been encroached upon – which in itself provided adequate redress. The applicant disagreed, pointing out in particular that no damage had been awarded in those proceedings.

The Court reiterates that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and*

Decisions 1996-III; *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003). An applicant's victim status may depend on the level of compensation awarded at domestic level, having regard to the facts about which he or she complains before the Court (see, for instance, *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001, in respect of a complaint under Article 6, or *Jensen and Rasmussen*, cited above, in respect of a complaint under Article 11).

In the present case, the Court is satisfied that the domestic authorities expressly acknowledged the breach complained of. However, they did not award damages to the applicant, holding that the prejudice suffered did not warrant such compensation.

In cases involving violations by the Hungarian authorities of Articles 10 and 11 the Court has already held that the finding of a violation can represent sufficient just satisfaction on its own in some circumstances (see, for Article 10, *Vajnai v. Hungary*, no. 33629/06, § 62, ECHR 2008; *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 43, 14 April 2009; *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, § 81, 3 December 2013; and for Article 11, *Patyi and Others v. Hungary*, no. 5529/05, § 53, 7 October 2008).

In the present case, the Court considers that the circumstances of the incident (see *Eon v. France*, no. 26118/10, 14 March 2013) are such as allowing a similar conclusion. It notes in particular that the prejudice the applicant may have suffered was limited to his appearance at the police station. Indeed, nothing indicates that subsequently he was prevented from resuming his protesting activity or that his intended expression endured a loss of temporal relevance on account of the intervention of the authorities.

In these circumstances, the Court is satisfied that the redress provided by the authorities sufficed to remove the applicant's status of victim for the purposes of Article 34 of the Convention.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 April 2016.

Françoise Elens-Passos
Registrar

Vincent A. De Gaetano
President