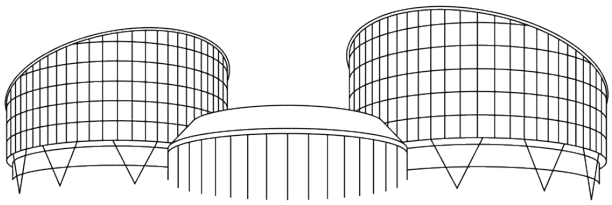

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

**CASE OF VONA v. HUNGARY**

*(Application no. 35943/10)*

JUDGMENT

STRASBOURG

9 July 2013

**FINAL**

09/12/2013

*This judgment has become final under Article 44 § 2 of the Convention.*

**In the case of Vona v. Hungary,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 11 June 2013,

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

# PROCEDURE

1. The case originated in an application (no. 35943/10) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Gábor Vona ("the applicant"), on 24 June 2010.

2. The applicant was represented by Mr T. Gaudi-Nagy, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged under Article 11 of the Convention that the dissolution of the Hungarian Guard Association, which he chaired, had violated his freedom of association.

4. On 14 March 2012 the Government were given notice of the application. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. On 12 June 2012 the President of the Section granted the European Roma Rights Centre leave, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, to intervene as a third party in the proceedings.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978 and lives in Budapest.

7. On 8 May 2007 the Hungarian Guard Association (*Magyar Gárda Egyesület* – "the Association") was founded by ten members of the political party Movement for a Better Hungary (*Jobbik Magyarországért Mozgalom*) with the stated aim of, *inter alia*, preserving Hungarian traditions and culture.

8. In its turn, on 18 July 2007 the Association founded the Hungarian Guard Movement (*Magyar Gárda Mozgalom* – "the Movement"). The Bureau of the Association stated that it had decided to "create the Hungarian Guard, first operating it as a movement but later attempting to integrate it into the Association as a section". It was also decided that "in order to integrate the Hungarian Guard into the Association, [the latter's current] charter need[ed] to be amended ... by 10 October 2007".

The Movement's objective was defined as "defending a physically, spiritually and intellectually defenceless Hungary". The tasks undertaken by the Movement, as listed in its deed of foundation, included the physical and psychological training of its members, participation in disaster management and in ensuring public safety, as well as the initiation of a social dialogue regarding these issues through public events.

9. On 4 October 2007 the Budapest public prosecutor's office addressed a notice to the Association calling on it to terminate its unlawful activities. It was noted that the Association had carried out activities that were not in accordance with its aims as defined in its charter. In particular, it was observed that on 25 August 2007 it had organised the swearing-in of fifty-six "guardsmen" in Buda Castle. Subsequently, the Association had conducted a national campaign aimed at popularising tasks defined for the Movement which were not in accordance with the aims of the Association. It was noted that certain aims of the Movement were not amongst those defined for the Association, nor were they in conformity with the Association's cultural and tradition-preserving nature.

On 9 November 2007 the applicant, as chairman of the Association, notified the public prosecutor's office that the unlawful activities had been terminated by deleting the impugned part from the Movement's deed of foundation, and that he had initiated the amendment of the Association's charter. Accordingly, on 7 December 2007 the General Assembly of the Association had decided to add the following provision to paragraph 2 of its charter: "(f) In accordance with its name, the Hungarian Guard Association has the aim of engaging in dialogue with society and of holding public events and gatherings for citizens on issues affecting their security, such as disaster management, national defence and life-saving techniques."

10. Purportedly in pursuit of these goals, members of the Movement dressed in uniform 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 criminality". These demonstrations and rallies were not prohibited by the authorities.

One of these demonstrations, involving some 200 activists, was organised in Tatárszentgyörgy, a village of around 1,800 inhabitants, on 9 December 2007. The police were present and did not allow the march to pass through a street inhabited by Roma families.

11. In reaction to this event, on 17 December 2007 the Budapest Chief Prosecutor's Office lodged a court action seeking the dissolution of the Association. The action was based on the Association's alleged abuse of the right to freedom of assembly and the fact that it had conducted activities which infringed the rights of the Roma by generating fear among them through speeches and appearance, that is to say, by the activists wearing uniforms, marching in formation and issuing military-style commands.

The Chief Prosecutor's Office was of the view that the Movement constituted a division of the Association, and that its activity in fact represented a significant part of the latter's activities. It argued that the Movement was not a "spontaneous community", in that its members were all registered, and stressed that it had been created by the presidency of the Association, that applications for membership were assessed by the Association and that its uniform could be bought from the Association.

12. In the ensuing proceedings the Association claimed, however, that there were no organisational ties between itself and the Movement of a kind amounting 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 activities did not present any objective danger to anyone. According to the Association, a subjective feeling of fear could not give rise to any limitation on fundamental rights, including freedom of assembly; the Movement's conduct had not been intimidating if regarded objectively.

13. After holding four hearings the Budapest Regional Court ruled in favour of the Chief Prosecutor's Office on 16 December 2008 and disbanded the Association under section 16(2)(d) of Act no. II of 1989 on the right to freedom of association (see paragraph 18 below).

The court did not accept the arguments concerning the distinction between the two entities and held that a "symbiotic relationship" existed between them. It held that the principal activity of the Association had been the founding, operation, guidance and financing of the Movement, observing, *inter alia*, that the Movement received donations through the Association's bank account. The legal effect of the judgment was nevertheless limited to the dissolution of the Association; since, in the court's view, the Movement did not have any legal personality, the judgment did not directly extend to it.

As regards the assembly in Tatárszentgyörgy, the Regional Court held as follows:

> "The essential purpose of the event was indeed to place the spotlight on 'Gypsy criminality'. The use of this generalisation, clearly based on racial and ethnic grounds, violated the principle of equal human dignity ... Moreover, this was not a one-off occasion ... [The Movement] based its programme on discrimination between people and expressed it by way of marches in several cases; this amounted to a demonstration of power and to threatening others through the appearance [of the participants in the marches]. ... The court is of the opinion that, from a constitutional point of view, to raise fear, virtually as a mission, is unacceptable as an aim or role."

14. The court noted that the participants, who were uniformed, had worn armbands quite similar to those of officers of the Arrow Cross (responsible for the reign of terror in Hungary in 1944/45). It took the view that marches with participants dressed in this way were objectively capable of wounding "historical sensitivities".

The court went on to declare that, despite the Association's stated purpose, its actions had violated Hungary's laws on associations and created an atmosphere of anti-Roma sentiment. According to the court, the verbal and visual demonstration of power alone amounted to an infringement of the law, in the light of historical experience; thus, for the Association to be dissolved it was not necessary for it to have committed an actual offence: the fact that its programme encompassed discrimination amounted to prejudicing the rights of others within the meaning of section 2(2) of Act no. II of 1989 (see paragraph 18 below).

15. On 2 July 2009 the Budapest Court of Appeal upheld the judgment of the Regional Court. It also considered two further similar demonstrations staged by the Movement, in the village of Fadd on 21 June 2008 and in the village of Sárbogárd on an unspecified date. The Court of Appeal noted that the speeches given by Movement members in the course of the Fadd rally had contained numerous remarks aimed at the exclusion of Roma. As to the Sárbogárd event, the Court of Appeal observed that there had been several anti-Semitic utterances.

This court established a closer connection between the two entities, extending the scope of its judgment also to the Movement. It held that the Association in fact included the Movement as a "unit"; consequently, the judgment concerned both of them. The Association's dissolution also dismantled the organisational framework of individuals operating within any movements related to the dissolved association.

The court ruled that the choice of locations for the demonstrations, that is, villages with large Roma populations, could not be seen as social dialogue, but as an extreme form of expression in the context of a quasi-military demonstration of force consisting of the cumulative effects of military-style uniforms, formations, commands and salutes. The Court of Appeal, while it upheld in essence the arguments of the Regional Court,

argued that the population of the villages had been subjected as a "captive audience" to these extreme and exclusionist views without being able to avoid receiving them. In the court's view, the events organised by the Movement constituted a risk of violence, generated conflict, breached public order and peace and violated the right to liberty and security of the inhabitants of the villages, despite the fact that all the demonstrations, which were tightly controlled by the police, 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 the case-law of the Court, that this freedom did not cover hate speech or incitement to violence.

16. On 15 December 2009 the Supreme Court upheld the judgment of the Budapest Court of Appeal. It endorsed the Court of Appeal's finding that the Movement was in fact an entity within the Association. It also agreed with the lower courts as to the necessity of disbanding the Association, pointing out that the Movement's rallies had caused situations of conflict whose protagonists might potentially have had recourse to violence.

This decision was served on 28 January 2010.

## II. RELEVANT DOMESTIC LAW

17. The Constitution, as in force at the material time, contained the following provisions:

**Article 2**

"3. The activities of social organisations, government bodies or individual citizens may not be directed at the forcible acquisition or exercise of public power, or at the exclusive possession of such power. Everyone has the right and obligation to resist such activities in such ways as are permitted by law."

**Article 63**

"1. In the Republic of Hungary every person has the right, on the basis of the right of association, to establish organisations whose goals are not prohibited by law and to join such organisations.

2. The establishment of armed organisations with political objectives shall not be permitted on the basis of the right of association.

3. A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the right of assembly and the financial management and operation of political parties."

18. Act no. II of 1989 on the right to freedom of association provides as follows:

**Section 2**

"(1) By virtue of the right of association private individuals, legal persons and their entities which have no legal personality may, subject to the aims of their activities and the intention of their founders, form and operate civil society organisations.

(2) The exercise of the right of association may not violate Article 2 § 3 of the Constitution, nor may it constitute a criminal offence or incitement to a criminal offence, and may not prejudice the rights and liberties of others."

**Section 3**

"(1) A civil society organisation is a voluntarily established self-governing organisation formed for a purpose stated in its articles of association, which has registered members and organises its members' activities in order to further its purpose.

(2) Unregistered members may also participate in large-scale public events."

**Section 4**

"(1) ... A civil society organisation comes into existence by means of registration with the courts."

**Section 5**

"A community of private individuals formed by virtue of the right of association, whose operation is not regular or which has no registered members or structure specified under this Act, shall not constitute a civil society organisation."

**Section 16**

"(2) Upon an action brought by the public prosecutor, the court:

...

(d) shall dissolve the civil society organisation if its operation violates section 2(2) hereof;

..."

The legal status of associations can be briefly characterised as follows. Associations whose activities do not serve a public interest cannot be supported by individuals by means of income-tax-deductible donations and are not entitled to receive other donations or to apply for public subsidies, as these privileges are reserved for public-benefit organisations under the provisions of Acts nos. CXXVI of 1996 and CLXXV of 2011. However, Act no. LXXXI of 1996 provides that income deriving from the non-profit activities of any association is exempt from corporate tax and that the associations' business activities are subject to preferential corporate taxation. In addition, under Act no. CXVII of 1995, advantageous income-tax rules apply to certain services provided by associations and certain remunerations and social welfare benefits received from them. Furthermore, Act no. IV of 1959 (on the Civil Code) provides that the members of an association are not liable for the association's debts.

19. Act no. LXXVII of 1993 on the rights of national and ethnic minorities, as in force at the material time, provided as follows:

**Section 4**

"(1) The Republic of Hungary prohibits all policies or conducts which:

(a) are aimed at or result in a minority's assimilation into, or exclusion or segregation from, the majority nation;

(b) aim to change the national or ethnic composition of areas populated by minorities ...;

(c) persecute, impair the lives of or hamper the exercise of the rights of a minority or persons belonging to a minority on account of their belonging to a minority;

..."

20. Law-Decree no. 8 of 1976, promulgating the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations at its 21st session on 16 December 1966, provides as follows:

**Article 20**

"2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

21. Law-Decree no. 8 of 1969, promulgating the International Convention on the Elimination of All Forms of Racial Discrimination adopted in New York on 21 December 1965, provides as follows:

**Article 1**

"1. In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

..."

**Article 2**

"1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: ...

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

..."

**Article 4**

"States Parties condemn all propaganda and all organizations which ... attempt to justify or promote racial hatred and discrimination in any form, and undertake to ...

(a) ... declare an offence punishable by law all ... incitement to racial discrimination ... and also the provision of any assistance to racist activities, including the financing thereof;

(b) ... declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

..."

22. Decision no. 30/1992 (V.26) AB of the Constitutional Court contains the following passages:

"II. 3. The criminal codes of all democratic European countries with continental legal systems, as well as those of England and Wales, Canada and New Zealand. which have the Anglo-Saxon legal system, prohibit incitement on a 'racial' basis. The demarcation of the boundary between incitement, arousal of hatred and expression of opinion remains hotly contested even internationally.

...

IV. 1. The potential harms resulting from incitement to hate, and from humiliating expressions of contempt for certain groups in a population are amply documented in the annals of human experience.

...

The tragic historical experiences of our century prove that views preaching racial, ethnic, national or religious inferiority or superiority and the dissemination of ideas of hatred, contempt and exclusion endanger the values of human civilization.

It is proved both by history and by the events of our times that any utterance expressing an intention to arouse hatred against a specific group of people can push social tension to extremes, disturb social harmony and peace and in an extreme case can result in violent clashes between certain groups of society.

In addition to the historical and contemporary experiences proving the extremely damaging effects of arousing hatred, it is necessary to consider the everyday threats that result from the unlimited expression of ideas and concepts liable to arouse hatred. Such expression prevents human communities from living in harmony with other groups. By intensifying emotional and social tensions within a smaller or bigger community, this can destroy ties within the society, reinforce extreme positions and increase prejudice and intolerance. All this results in a diminution of the chances of creating a tolerant and multicultural society which acknowledges pluralism, the right to be different and the equal dignity of all people, and in which discrimination is not regarded as a value.

2. To afford constitutional protection to the incitement of hatred against certain groups under the guise of freedom of expression and of the press would present an irresolvable contradiction with the value system and political orientation expressed in the Constitution, that is, with the democratic rule of law, the equality of human beings, equal dignity, the prohibition of discrimination, freedom of religion and

conscience and the protection of national and ethnic minorities, as recognised by the various Articles of the Constitution.

...

Incitement to hatred is a negation of the above-mentioned notions, an emotional preparation for the use of violence. It is an abuse of freedom of expression, being an intolerant classification of a group characteristic of dictatorships rather than democracies. To tolerate the exercise of freedom of expression and of the press in a manner prohibited by Article 269 § 1 of the Criminal Code would contradict the requirements flowing from the democratic rule of law.

...

As a summary of its position, the Constitutional Court points out that the restriction of freedom of expression and of the press is necessitated and justified by the negative historical experiences surrounding the arousal of hatred against certain groups of people, by the protection of constitutional values and by the obligation of the Republic of Hungary to comply with its commitments under international law.

..."

23. Decision no. 14/2000 (V.12) AB of the Constitutional Court contains the following passages:

"3. The freedom to express one's opinion is not only a subjective right but also a guarantee of the free expression of various views shaping public opinion. ...

Although this right can be restricted, it enjoys special protection due to its primary role, and thus may be restricted only in relation to a few other rights. Therefore, secondary theoretical values such as public peace enjoy less protection than the right concerned. ...

Like the right to life, the right to human dignity is eminently protected in the Constitution ... The Constitution is not value-neutral but has its own set of values. Expressing opinions inconsistent with constitutional values is not protected by Article 61 of the Constitution. ...

The Constitutional Court points out that, also under the Convention, freedom of expression carries with it 'duties and responsibilities'. All State authorities are obliged to protect the values of a democratic State under the rule of law and to respect the dignity of persons. Action must be taken against conduct representing force, hatred and conflict. Rejecting the use or threat of force as a means of solving conflicts is part of the complex concept of democracy."

24. Decision no. 18/2004 (V.25) AB of the Constitutional Court contains the following passage:

"III. 2.1. ... Even in the case of extreme opinions, it is not the content of the opinion but the direct and foreseeable consequences of its communication that justify a restriction on free expression and the application of legal measures under civil or, in some cases, criminal law."

25. Decision no. 95/2008 (VII.3) AB of the Constitutional Court contains the following passages:

"III. 3.4. ... The aim of the amendment [to the Criminal Code] is to punish hate speech and gestures even if the injured party cannot be identified. As a result,

however, the amendment would punish not only conduct violating the honour and dignity of particular persons but all forms of hate speech, including racist statements containing generalisations, meaning that the 'affected' parties or the parties that consider themselves to be 'affected' are not forced to take part in or follow the exchange of communication between persons expressing hatred or to face hate thoughts in certain media outlets. ... Extremist voices are not suppressed in constitutional democracies simply on account of their content. In a democratic society such generalising, racist speech cannot change the fact that, from the State's perspective, each citizen is equally valuable and has the same basic rights.

In its present form, the amendment would also punish speeches containing only such generalisations. Participation in the communication by persons belonging to the group being attacked, that is, their listening to or being exposed in any way to the racist statements, is not a statutory element of the offence as defined in the amendment.

However, these are precisely the cases in which the expression of an opinion may offend not only the sensitivity or sense of dignity of certain persons but also their constitutional rights. For example, if a perpetrator expresses his extremist political convictions in such a manner that a person belonging to the injured group is forced to listen to the communication in a state of intimidation, and is not in a position to avoid it ['captive audience'] ... In this case, the right of the person concerned not to listen to or become aware of the distasteful or injurious opinion deserves protection. ...

Persons belong not only to the community of citizens but also to a narrower group or community. An individual can, also by virtue of belonging to such a group, be exposed to an injury of such gravity and intensity that recourse to criminal-law sanctions may even be warranted to redress the issue."

## III. OBSERVATIONS OF INTERNATIONAL HUMAN RIGHTS MONITORING BODIES

26. The Concluding Observations of the United Nations Human Rights Committee in respect of Hungary (adopted in Geneva, 11-29 October 2010) contain the following passage:

"18. The Committee is concerned at the virulent and widespread anti-Roma statements by ... members of the disbanded Magyar Gárda. ... Furthermore, it is concerned at indications of rising anti-Semitism in the State party. The Committee is concerned at the Constitutional Court's restrictive interpretation of article 269 of the Penal Code on incitement to violence, which may be incompatible with the State party's obligations under article 20 ..."

27. The Fourth Report of the European Commission against Racism and Intolerance on Hungary, adopted on 20 June 2008, contains the following passages:

"61. ... [T]here has been a disturbing increase in racism and intolerance in public discourse in Hungary. In particular, the creation and rise of the radical right-wing Hungarian Guard (*Magyar Gárda*) ... is consistently cited as a cause for deep concern. Since its creation in August 2007 and the public swearing in of several hundred new members in October 2007, the Hungarian Guard has organised numerous public rallies throughout the country, including in villages with large Roma populations; despite apparently innocuous articles of association, amongst the group's chief messages is the defence of ethnic Hungarians against so-called 'Gipsy crime[1]'.

> Members of the Hungarian Guard parade in matching, paramilitary-style black boots and uniforms, with insignia and flags closely resembling the flag of the Arrow Cross Party, an openly Nazi organisation that briefly held power in Hungary during World War II, and during whose spell in power tens of thousands of Jews and Roma were killed or deported.
>
> ...
>
> 73. ... Groups such as the Hungarian Guard also openly express antisemitic views, ... the expression of antisemitic views is currently on the rise in Hungary."

28. The Third Opinion on Hungary of the Advisory Committee of the Framework Convention for the Protection of National Minorities, adopted on 18 March 2010, contains the following passage:

> "75. Since its creation in 2007, the Hungarian Guard (Magyar Gárda), has organised numerous public rallies throughout the country, including in villages with large Roma populations, during which members of the Hungarian Guard parade in matching, paramilitary-style black boots and uniforms, with Nazi insignia and flags. ... the Advisory Committee is concerned by this threatening behaviour. ..."

## IV. COMPARATIVE LAW

29. The German Federal Constitutional Court held, in its *Stoppt den Synagogenbau!* judgment of 23 June 2004 (BVerfGE, 111, 147 – *Inhaltsbezogenes Versammlungsverbot*), that to avert danger to public order it was possible to restrict freedom of assembly if it was the *Art und Weise*, that is, the manner or means by which an assembly was conducted, and not the content, which gave rise to concerns. Accordingly, it was permissible to restrict "aggressive and provocative conduct by participants which intimidates citizens and through which demonstrators create a climate of violent demonstration and potential readiness for violence". With regard to an extreme right-wing march staged on Holocaust Memorial Day, it held in addition that "the manner or means [by which an assembly is conducted] [may] give rise to provocation which significantly encroaches upon moral sensitivities [*sittliches Empfinden*]". Regarding the way in which the assembly was conducted, the Federal Constitutional Court also attached importance to the provocative behaviour of the protestors. It added that the same applied "when a procession, on account of its overall character [*durch sein Gesamtgepräge*] identifies with the rites and symbols of the Nazi tyranny and intimidates other citizens by evoking the horrors of the past totalitarian and inhumane regime".

30. In the context of the dissolution of an association the German Federal Administrative Court, in judgment BVerwG 6 A 3.08 of 5 August 2009, summarised its case-law on the banning of associations as follows:

---

1. Otherwise referred to as criminality.

"16. Whether or not the purpose and activity of an association are punishable under criminal law will depend on the intentions and conduct of its members. An association as such cannot be criminally liable. Only natural persons are punishable under criminal law because criminality implies a capacity for criminal responsibility [*Schuldzurechnungsfähigkeit*], which only natural persons possess. As is clear from section 3(5) of the Association Act [*VereinsG*], it is nevertheless legally possible for an association to be criminally liable [*Strafgesetzwidrigkeit einer Vereinigung*] because the association can form, through its members and through its representing organs, a collective will which is detached from the individual members and which develops its own purpose [*Zweckrichtung*] and can act independently. If the criminal law is breached as a result of this own purpose or of the independent actions of an association, all the conditions for applying the prohibition [*Verbotstatbestand*] are fulfilled. A decisive factor in this context is that the members' conduct can be attributed to the association. The character of the association must be shaped [*prägen*] by the criminal offences [*Strafgesetzwidrigkeit*] committed by its members. An association can strive concurrently for different aims; besides the legal aim laid down in its rules, it can also pursue criminal aims which it achieves through the conduct of its members. ...

17. The prohibition of an association based on section 3(1), first sentence, first alternative, of the Associations Act read in conjunction with the first alternative of Article 9 § 2 of the Basic Law, is *de iure* independent of the criminal conviction of a member or an official of the association. It is within the competency of the authority issuing the prohibition order and the administrative court to examine whether there has been a breach of criminal law [*Gesetzeswidrigkeit*]. However, it is not the purpose of the prohibition [*Verbotstatbestand*] to impose an additional sanction on individuals who have already violated criminal provisions. Rather, the purpose [of the provision] is to deal with a particular threat to public safety and public order expressed in the founding or continuing existence of an organisation which is planning or committing criminal acts. Such organisations constitute a particular threat to interests [*Rechtsgüter*] protected by the criminal law. The organisation's inherent momentum and its organised human and material resources facilitate and promote punishable acts. At the same time, the sense of responsibility of each member is often reduced, individual resistance to committing a criminal act is lessened, and the impetus to commit further criminal acts is created (judgment of 18 October 1988, op. cit., p. 307 and pp. 23-24 respectively; Löwer, in: v. Münch/Kunig, GG, Vol. 1, 5th ed. 2000, note 39 ad Article 9)."

The German Federal Administrative Court has repeatedly upheld dissolution orders in respect of associations which supported (neo-)Nazi ideas. In its *Heimattreue Deutsche Jugend* judgment of 1 September 2010 (BVerwG 6 A 4.09), in which members of the association were propagating Nazi racial treatises and ideas, the Federal Administrative Court reiterated its relevant case-law, stating that in order to satisfy the conditions of the ban the association must have intended to realise its anti-constitutional aims in a militant or aggressive way, a condition which did not require the use of force or a specific violation of the law. It was sufficient, for the finding of an unconstitutional aim that justified the ban, for the programme, imagery and style to indicate an essential relationship with Nazism. The fact that an association aligned itself with the Nazi party (prohibited in Germany) or propagated a racial theory which was not in conformity with the

constitutional prohibition of discrimination was sufficient to meet the conditions for banning the association. If an association attempted to hide its unconstitutional intentions, the conditions for the ban would become clear simply from the general picture formed by the individual statements and conduct. The fact that these elements might appear to be subordinate to a varying number of innocuous circumstances said nothing in itself about their significance.

31. The Supreme Court of the United States considered the problem of intimidation in *Virginia v. Black*, 538 US 343 (2003). A Virginia statute makes it a felony "for any person ..., with the intent of intimidating any person or group ..., to burn a cross on the property of another, a highway or other public place," and specifies that "[a]ny such burning ... shall be prima facie evidence of an intent to intimidate a person or group."

The Supreme Court held that burning a cross in the United States was inextricably intertwined with the history of the Ku Klux Klan. The Klan had often used cross burnings as a tool of intimidation and a threat of impending violence. To this day, regardless of whether the message was a political one or was also meant to intimidate, the burning of a cross was a "symbol of hate." While cross burning did not inevitably convey a message of intimidation, often the cross burner intended that the recipients of the message should fear for their lives. The First Amendment of the Constitution of the United States permitted a State to ban "true threats", which encompassed those statements where the speaker meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protected individuals from the fear of violence and the disruption that fear engendered, as well as from the possibility that the threatened violence would occur. Intimidation in the constitutionally proscribable sense of the word was a type of true threat, where a speaker directed a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The First Amendment permitted Virginia to outlaw cross burnings done with the intent to intimidate, because burning a cross was a particularly virulent form of intimidation.

# THE LAW

## ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

32. The applicant complained that the dissolution of the Association which he chaired amounted to a violation of his right to freedom of

association as guaranteed by Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The Government contested that argument.

### A. Admissibility

33. In the Government's view, the application should be declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention in the light of Article 17, because the Association provided an institutional framework for expressing racial hatred against Jewish and Roma citizens. They drew attention to the fact that international human rights monitoring bodies (such as the Advisory Committee of the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance (ECRI), see paragraphs 26-28 above) had also raised concerns about the threatening effect of the uniform, insignia and flags used in the Movement's demonstrations.

34. The Government referred to the case-law of the Convention institutions, including the Court's decision in *Garaudy v. France* ((dec.), no. 65831/01, ECHR 2003-IX). They pointed out that, where the right to freedom of expression had been relied on by applicants to justify the publication of texts that infringed the very spirit of the Convention and the essential values of democracy, the European Commission of Human Rights had had recourse to Article 17 of the Convention, either directly or indirectly, in rejecting their arguments and declaring their applications inadmissible (examples included *Glimmerveen and Hagenbeek v. the Netherlands*, nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, Decisions and Reports (DR) 18, p. 187, and *Marais v. France*, no. 31159/96, Commission decision of 24 June 1996, DR 86-B, p. 184). In the Government's view, the Court had subsequently confirmed that approach (they referred to *Lehideux and Isorni v. France*, 23 September 1998, §§ 47 and 53, *Reports of Judgments and Decisions* 1998-VII). Moreover, they pointed out that, in a case concerning Article 11 (*W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII), the Court had

observed that "the general purpose of Article 17 is to prevent totalitarian groups from exploiting in their own interests the principles enunciated by the Convention". Similar conclusions had been reached in the cases of *Norwood v. the United Kingdom* ((dec.), no. 23131/03, ECHR 2004-XI), and *Witzsch v. Germany* ((dec.), no. 7485/03, 13 December 2005); the Government referred by contrast to *Vajnai v. Hungary* (no. 33629/06, § 25, ECHR 2008).

35. The applicant argued in reply that the activities of the Association did not constitute abuse of the right to freedom of expression and association, their objective having been the restoration of the rule of law by protecting citizens from criminals. The Association had not been involved in any activity aimed at the destruction of any of the rights and freedoms set forth in the Convention.

36. The Court observes at the outset that, unlike the cases cited by the Government involving the right to freedom of expression, the present application concerns the applicant's right to freedom of association, and indeed a quite serious restriction on it, resulting in the termination of the Association's legal existence as such. Therefore, the present application is to be distinguished from those relied on by the Government. In respect of the latter the Court observes that, particularly in *Garaudy* and in *Lehideux and Isorni* (both cited above), the justification of Nazi-like politics was at stake. Consequently, the finding of an abuse under Article 17 lay in the fact that Article 10 had been relied on by groups with totalitarian motives.

37. In the instant case, however, it has not been argued by the Government that the applicant expressed contempt for the victims of a totalitarian regime (contrast *Witzsch*, cited above) or that he belonged to a group with totalitarian ambitions. Nor does the information contained in the case file support such a conclusion. The applicant was, at the material time, the chairman of a registered association. He complains about the dissolution of that association together with that of a movement which, in the domestic courts' view, constituted an entity within that association, essentially on account of a demonstration which had not been declared unlawful at the domestic level and did not lead to any act of violence. In these circumstances, the Court cannot conclude that the Association's activities were intended to justify or propagate an ideology of oppression serving "totalitarian groups".

38. Those activities, whose compatibility with Article 11 of the Convention will be the subject matter of a review on the merits (compare and contrast *Féret v. Belgium*, no. 15615/07, § 52, 16 July 2009), do not reveal prima facie any act aimed at the destruction of any of the rights and freedoms set forth in the Convention (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 29, *Reports* 1998-IV) or any prima facie intention on the applicant's part to publicly defend or disseminate propaganda in support of totalitarian views (see *Vajnai*, cited above,

§§ 24-26). Only when the above-mentioned review is complete will the Court be in a position to decide, in the light of all the circumstances of the case, whether Article 17 of the Convention should be applied (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 96, ECHR 2003-II).

39. It follows that, for the Court, the application does not constitute an abuse of the right of petition for the purposes of Article 17 of the Convention. Therefore, it is not incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

#### (a) The Government

40. The Government maintained that the Movement had not had a distinct legal status but had been a unit of the Association created, organised and financed by the latter. Its members had acted in the interests and under the guidance of the Association and paid their membership fees to it. The fact that the Association's charter did not clarify its internal structure could not lead to the conclusion that the Movement had not been *de jure* part of the Association. However, even assuming that the Movement had been a distinct entity *de jure*, its *de facto* links to the Association justified the finding that the Association had overstepped its freedom of expression on account of the Movement's operation. Therefore, the Association chaired by the applicant had not been dissolved because of the acts of a distinct entity but because of its own activities.

41. Moreover, the Government were of the opinion that there had been no interference with the applicant's freedom of association, since that freedom did not cover the right to associate in order to disseminate racist propaganda. However, even if there had been interference, it had been prescribed by law and served the legitimate aims of protecting public safety, the prevention of disorder or crime and the protection of the rights and freedoms of others.

42. Furthermore, the interference had been necessary in a democratic society, given the racist and anti-Semitic content of the demonstrations staged by the Movement and its paramilitary rituals, which were intimidating and traumatising, promoted segregation, increased social tension and provoked violence. As to proportionality, dissolution was an appropriate sanction for the propagation of racial discrimination and segregation. It was not even the most severe sanction available, since criminal sanctions could be invoked as well as an *ultima ratio* against the

individuals involved who were responsible for the most serious expressions of racial hatred, inciting others to violence.

**(b) The applicant**

43. At the outset the applicant stressed that, contrary to the findings of the domestic courts, the impugned actions of the Movement could not be imputed to the dissolved Association. He disputed that the Movement had constituted an integral part of the Association, since the two entities had functioned separately and independently, albeit in cooperation. He also emphasised that none of the Association's members had participated in the Movement.

44. The applicant contested the Government's argument that the dissolution of the Association had pursued a legitimate aim in the interests of national security or public safety, that is, for the prevention of disorder and crime and the protection of the rights and freedoms of others within the meaning of Article 11 § 2 of the Convention. In his view, the courts had failed to establish any instances of actual disorder or any violation of the rights of others. He stressed that the domestic decisions had referred to a merely hypothetical danger whose prevention could not be seen as a legitimate aim under the Convention.

45. Furthermore, the applicant alleged that, even assuming that the interference with the rights enshrined under Article 11 of the Convention had been lawful, the dissolution of the association had been neither necessary nor proportionate to the aims pursued. He noted that any interference by the public authorities with the exercise of the right of freedom of association had to be in proportion to the seriousness of the impugned conduct; thus, the sanction pronounced by the domestic courts had been excessively severe. Under the Court's case-law, dissolution was reserved for situations in which the activities of an association seriously endangered the very essence of the democratic system; neither the Association's nor the Movement's activities had sought or had such an effect. In any event, the relevant domestic law did not provide for any sanction other than dissolution in respect of the allegedly unlawful activities of an association, a fact which in itself excluded all proportionality.

46. The applicant also pointed out that the exceptions set out in Article 11 § 2 were to be construed narrowly: only convincing and compelling reasons could justify restrictions on freedom of association. However, in the present case, the domestic courts had not adduced sufficient and relevant reasons for the restriction, since they had failed to demonstrate how the activities of the Association were capable of provoking conflicts or either supporting or promoting violence and the destruction of democracy. Indeed, the Association's activities had merely been aimed at enabling the discussion of unresolved social problems such as the security of vulnerable people and the extraordinarily high crime rate.

47. The applicant further drew attention to the Court's case-law considering Article 11 in the light of Article 10. In that context he conceded that the ideas expressed by the Movement might be offensive or shocking. Nevertheless, they did not amount to incitement to hatred or intolerance, and were thus compatible with the principles of pluralism and tolerance within a democratic society.

**(c) The third party**

48. The European Roma Rights Centre submitted that the freedoms guaranteed under Article 11 of the Convention could be restricted in order to protect the rights and freedoms of minority communities. Making reference, *inter alia*, to the relevant provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, it argued that organisations which attempted to justify or promote racial hatred and discrimination in any form did not come within the scope of the protection provided by Article 11. The third party further drew attention to the fact that minorities, and in particular the Roma, enjoyed special protection under Article 14 of the Convention, and referred to the emerging international consensus amongst Contracting States of the Council of Europe towards recognising an obligation to protect their security.

*2. The Court's assessment*

**(a) Whether there was interference**

49. The Court notes that the Association chaired by the applicant was dissolved and that the effects of that measure extended to the Movement (see paragraph 15 above). It therefore considers that there was interference with the applicant's rights guaranteed under Article 11 of the Convention.

**(b) Whether the interference was justified**

50. Such interference will constitute a violation of Article 11 unless it was prescribed by law, pursued one or more legitimate aims for the purposes of Article 11 § 2 and was necessary in a democratic society to achieve those aims.

*(i) "Prescribed by law"*

51. The Court observes that the Association, and consequently the Movement, was dissolved under section 16(2)(d) of Act no. II of 1989 on the right to freedom of association (see paragraph 18 above), including the reference therein to section 2(2) ("prejudice the rights and liberties of others").

It further takes note of the parties' diverging arguments as to whether the domestic court decisions lawfully included the dissolution of the Movement in ordering the Association's disbandment.

In this connection the Court notes that, in reply to the prosecution authorities' factual observations (see in detail in paragraph 11 above), the Budapest Court of Appeal and the Supreme Court held (see paragraphs 15-16 above) that the Movement had to be regarded, as a matter of interpretation of the domestic law on associations, as an entity operating within the Association rather than independently. Those courts observed that the principal activity of the Association was the founding, operation, guidance and financing of the Movement.

The Court finds no particular element in the case file or the parties' submissions which would render this application of the law arbitrary, the national authorities being better positioned to provide an interpretation of the national law and to assess evidence. In view of the fact that the creation of the Movement was a project of the Association, that the Movement and the Association shared a bank account, that candidates for membership of the Movement were assessed by the Association and that the former's uniform could be bought from the latter, the Court does not find the position of those courts unreasonable.

Consequently, the Court is satisfied that the dissolution of the Association on account of the actions of the Movement was "prescribed by law", given the domestic courts' findings as to their relationship.

*(ii) Legitimate aim*

52. The Court considers that the impugned measure can be seen as pursuing the aims of public safety, the prevention of disorder and the protection of the rights of others, all of which are legitimate for the purposes of Article 11 § 2 of the Convention, notwithstanding the applicant's allegation that the domestic courts had not demonstrated the existence of any actual instances of disorder or violation of the rights of others (see paragraph 44 above).

It remains to be ascertained whether the impugned measure was necessary in a democratic society.

*(iii) Necessary in a democratic society*

*(α) General principles*

53. The general principles articulated in the Court's case-law in this sphere are summarised in the case of *United Communist Party of Turkey and Others v. Turkey* (30 January 1998, *Reports* 1998-I) as follows.

> "42. The Court reiterates that notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (see, among other authorities, the *Young, James and Webster v. the United Kingdom* judgment of 13 August 1981, Series A no. 44, p. 23, § 57, and the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323, p. 30, § 64).

43. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy ...

As the Court has said many times, there can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, among many other authorities, the *Vogt* judgment cited above, p. 25, § 52). The fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention.

...

45. Democracy is without doubt a fundamental feature of the European public order (see the *Loizidou* judgment cited above, p. 27, § 75).

...

In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it.

...

46. Consequently, the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts. The Court has already held that such scrutiny was necessary in a case concerning a Member of Parliament who had been convicted of proffering insults (see the *Castells* judgment cited above, pp. 22–23, § 42); such scrutiny is all the more necessary where an entire political party is dissolved and its leaders banned from carrying on any similar activity in the future.

47. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, the *Jersild v. Denmark* judgment of 23 September 1994, Series A no. 298, p. 26, § 31)."

54. Further relevant principles are contained in the judgment in *Refah Partisi (the Welfare Party) and Others* (cited above), as follows:

"(γ) The possibility of imposing restrictions, and rigorous European supervision

96. The freedoms guaranteed by Article 11, and by Articles 9 and 10 of the Convention, cannot deprive the authorities of a State in which an association, through its activities, jeopardises that State's institutions, of the right to protect those institutions. In this connection, the Court points out that it has previously held that some compromise between the requirements of defending democratic society and individual rights is inherent in the Convention system. For there to be a compromise of that sort any intervention by the authorities must be in accordance with paragraph 2 of Article 11 – a matter which the Court considers below. ...

...

98. ... [A] political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (see *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II, and, *mutatis mutandis*, the following judgments: *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX, and *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1256-57, §§ 46-47).

99. The possibility cannot be excluded that a political party, in pleading the rights enshrined in Article 11 and also in Articles 9 and 10 of the Convention, might attempt to derive therefrom the right to conduct what amounts in practice to activities intended to destroy the rights or freedoms set forth in the Convention and thus bring about the destruction of democracy (see *Communist Party (KPD) v. Germany*, no. 250/57, Commission decision of 20 July 1957, Yearbook 1, p. 222). In view of the very clear link between the Convention and democracy ..., no one must be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society. Pluralism and democracy are based on a compromise that requires various concessions by individuals or groups of individuals, who must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole (see, *mutatis mutandis*, *Petersen v. Germany* (dec.), no. 39793/98, ECHR 2001-XII).

In that context, the Court considers that it is not at all improbable that totalitarian movements, organised in the form of political parties, might do away with democracy, after prospering under the democratic regime, there being examples of this in modern European history.

...

(δ) Imputability to a political party of the acts and speeches of its members

101. The Court further considers that the constitution and programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions. The political experience of the Contracting States has shown that in the past political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. That is why the Court has always pointed out that a party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it

does not, the content of the programme must be compared with the actions of the party's leaders and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of a political party, provided that as a whole they disclose its aims and intentions ...

(ε) The appropriate timing for dissolution

102. In addition, the Court considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may 'reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime' (see the Chamber's judgment, § 81).

103. The Court takes the view that such a power of preventive intervention on the State's part is also consistent with Contracting Parties' positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments but also to interference imputable to private individuals within non-State entities ... A Contracting State may be justified under its positive obligations in imposing on political parties, which are bodies whose *raison d'être* is to accede to power and direct the work of a considerable portion of the State apparatus, the duty to respect and safeguard the rights and freedoms guaranteed by the Convention and the obligation not to put forward a political programme in contradiction with the fundamental principles of democracy.

(ζ) Overall examination

104. In the light of the above considerations, the Court's overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a 'pressing social need' (see, for example, *Socialist Party and Others*, cited above, p. 1258, § 49) must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the acts and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a 'democratic society'.

105. The overall examination of the above points that the Court must conduct also has to take account of the historical context in which the dissolution ... took place ... in the country concerned to ensure the proper functioning of 'democratic society' (see, *mutatis mutandis*, *Petersen*, cited above)."

55. The Court's judgment in *Herri Batasuna and Batasuna v. Spain* (nos. 25803/04 and 25817/04, ECHR 2009) contains further relevant passages:

"79. ... It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the

destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds ...

...

81. ... [A] State may 'reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime' (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 102).

...

83. ... [The] Court's overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a 'pressing social need' (see, for example, *Socialist Party and Others*, cited above, § 49) must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently and reasonably imminent, and (ii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a 'democratic society' ..."

*(β) Application of those principles to the present case*

56. The Court points out at the outset that, although the right to create and operate political parties falls within the protection of Article 11 of the Convention, as does the right to create and operate social organisations, these two types of entity differ from each other as regards, amongst other elements, the role which they play in the functioning of a democratic society, since many social organisations contribute to that functioning only in an indirect manner.

In several member States of the Council of Europe, political parties enjoy a special legal status which facilitates their participation in politics in general and in elections in particular; they also have specific legally endorsed functions in the electoral process and in the formation of public policies and public opinion.

Social organisations do not normally enjoy such legal privileges and have, in principle, fewer opportunities to influence political decision-making. Many of them do not participate in public political life, although there is no strict separation between the various forms of associations in this respect, and their actual political relevance can be determined only on a case-by-case basis.

Social movements may play an important role in the shaping of politics and policies, but compared with political parties such organisations usually have fewer legally privileged opportunities to influence the political system. However, given the actual political impact which social organisations and movements have, when any danger to democracy is being assessed, regard must be had to their influence.

57. In the Court's view, the State is also entitled to take preventive measures to protect democracy *vis-à-vis* such non-party entities if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions. One such value is the coexistence of members of society free from racial segregation, without which a democratic society is inconceivable. The State cannot be required to wait, before intervening, until a political movement takes action to undermine democracy or has recourse to violence. Even if that movement has not made an attempt to seize power and the risk of its policy to democracy is not imminent, the State is entitled to act preventively if it is established that such a movement has started to take concrete steps in public life to implement a policy incompatible with the standards of the Convention and democracy (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 102).

58. In assessing the necessity and proportionality of the measure complained of, the Court notes that the instant case concerns the dissolution of an association and a movement rather than that of a political party. The responsibilities originating in the particular constitutional role and legal privileges that apply to political parties in many member States of the Council of Europe may apply in the case of social organisations only to the extent that the latter do actually have a comparable degree of political influence. On the other hand, the Court is aware that the termination of the legal existence of the Association and the Movement was a sanction of considerable gravity, because it equated to stripping these groups of the legal, financial and practical advantages normally secured to registered associations in most jurisdictions (see paragraph 18 above). Therefore, any such measure must be supported by relevant and sufficient reasons, just as in the case of dissolution of a political party, although in the case of an association, given its more limited opportunities to exercise national influence, the justification for preventive restrictive measures may legitimately be less compelling than in the case of a political party. In view of the difference in the importance for a democracy between a political party and a non-political association, only the former deserves the most rigorous scrutiny of the necessity of a restriction on the right to associate (compare, *per analogiam*, the level of protection granted to political speech and to speech which does not concern matters of public interest, in *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Tammer v. Estonia*, no. 41205/98, § 62, ECHR 2001-I). This distinction has to be applied with sufficient flexibility. As regards associations with political aims and influence, the level of scrutiny will depend on the actual nature and functions of the association in view of the circumstances of the case.

59. The Court observes that the Movement about whose dissolution the applicant complains was created by the Association with the stated purpose of "defending a physically, spiritually and intellectually defenceless

Hungary" (see paragraph 8 above). The Movement's subsequent activities involved rallies and demonstrations, the members sporting uniforms and parading in military-like formations. These events were held in various parts of the country, and in particular in villages with large Roma populations such as Tatárszentgyörgy; calls were also made for the defence of "ethnic Hungarians" against so-called "Gypsy criminality" (see paragraph 10 above). In reaction to this sequence of events, the public prosecutor brought an action against the Movement and the Association, the essence of which was that the defendants' activities amounted to racist intimidation of citizens of Roma origin (see paragraph 11 above).

60. In the ensuing judicial proceedings the courts assessed the links between the two defendants and found convincing evidence that they did not constitute separate entities. In view of the arguments considered in this context, the Court cannot find this conclusion unreasonable or arbitrary (see paragraphs 11, 13, 15, 16 and 51 above).

61. The case resulted in the dissolution of both the Association and the Movement. In essence, the domestic courts found that even though no actual violence had occurred as a result of the defendants' activities, they were liable for having created an anti-Roma atmosphere through verbal and visual demonstrations of power. This amounted to a breach of the relevant law on associations, ran counter to human dignity and prejudiced the rights of others, that is, of Roma citizens. In the latter connection the courts observed that the central theme of the Tatárszentgyörgy rally was "Gypsy criminality", a racist concept. The courts paid particular attention to the fact that the impugned rallies involved military-style uniforms, commands, salutes and formations as well as armbands reminiscent of Arrow Cross symbols. On appeal, this reasoning was extended to include considerations to the effect that the populations of the villages targeted by the Movement were a "captive audience", because those citizens had not been in a position to avoid the extreme and exclusionary views conveyed by the Movement's actions. In the courts' view, the latter amounted to creating a public menace by generating social tension and bringing about an atmosphere of impending violence (see paragraphs 15 and 16 above).

62. The Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Lehideux and Isorni*, cited above, § 50). The Court's task is merely to review the decisions delivered by the authorities within their margin of appreciation. In so doing, it must satisfy itself that they based their decisions on an acceptable assessment of the relevant facts (see *Incal v. Turkey*, 9 June 1998, § 48, *Reports* 1998-IV). In the circumstances of the present case, the Court cannot find the conclusions of the Hungarian courts unreasonable or arbitrary and it shares the view of those courts that the activities of and the ideas expressed by the Movement

relied on a race-based comparison between the Roma minority and the ethnic Hungarian majority (see paragraph 13 above).

63. The Court has previously held, in the context of Article 10, that ideas or conduct cannot be excluded from the protection provided by the Convention merely because they are capable of creating a feeling of unease in groups of citizens or because some may perceive them as disrespectful (see *Vajnai*, cited above, § 57). It is of the view that similar considerations must apply to freedom of association in so far as it concerns the association of individuals in order to further ideas which are less than widely accepted, or even shocking or disturbing. Indeed, unless the association in question can reasonably be regarded as a breeding ground for violence or as incarnating a negation of democratic principles, radical measures restricting such fundamental rights as that of freedom of association – in the name of protecting democracy – are difficult to reconcile with the spirit of the Convention, which is aimed at guaranteeing the articulation of political views (even those which are difficult to accept for the authorities or a larger group of citizens and contest the established order of society) through all peaceful and lawful means, including association and assemblies (see, *mutatis mutandis*, *Güneri and Others v. Turkey*, nos. 42853/98, 43609/98 and 44291/98, § 76, 12 July 2005).

64. That being so, it has to be ascertained whether in this particular case the actions of the Association and the Movement remained within the limits of legal and peaceful activities. In this connection the Court cannot overlook the fact that their activists staged several rallies, such as the event in Tatárszentgyörgy which involved some 200 persons in a village of approximately 1,800 inhabitants. It is true that no actual violence occurred, although it is not possible to determine with hindsight whether or not this was because of the presence of the police. The activists were marching in the village wearing military-style uniforms and threatening armbands, in a military-like formation, giving salutes and issuing commands of the same kind.

65. In the Court's view, such a rally was capable of conveying the message to those present that its organisers had the intention and the capacity to have recourse to a paramilitary organisation to achieve their aims, whatever they might be. The paramilitary formation was reminiscent of the Hungarian Nazi (Arrow Cross) movement, which was the backbone of the regime that was responsible, amongst other things, for the mass extermination of Roma in Hungary. Having regard to the fact that there were established organisational links between the Movement whose activists were present and the Association, the Court also finds that the intimidating effect of the rallies in Tatárszentgyörgy and elsewhere must have gained momentum – and indeed, have been multiplied – by virtue of the fact that the rallies were backed by a registered association benefiting from legal recognition.

66. The Court considers that the demonstration by political protagonists of their ability and willingness to organise a paramilitary force goes beyond the use of peaceful and lawful means of articulating political views. In the light of historical experience – such as that of Hungary in the wake of the era of Arrow Cross power – the reliance of an association on paramilitary demonstrations which express racial division and implicitly call for race-based action must have an intimidating effect on members of a racial minority, especially when they are in their homes and as such constitute a captive audience. In the Court's view, this exceeds the limits of the scope of protection secured by the Convention in relation to expression (see *Vajnai*, cited above) or assemblies and amounts to intimidation, which is – in the words of the United States Supreme Court's judgment in *Virginia v. Black* (see paragraph 31 above) – a "true threat". The State is therefore entitled to protect the right of the members of the target groups to live without intimidation. This is particularly true because they were singled out on a racial basis and were intimidated on account of their belonging to an ethnic group. In the Court's view, a paramilitary march goes beyond the mere expression of a disturbing or offensive idea, since the message is accompanied by the physical presence of a threatening group of organised activists. Where the expression of ideas is accompanied by a form of conduct, the Court considers that the level of protection generally granted to freedom of expression may be reduced in the light of important public-order interests related to that conduct. If the conduct associated with the expression of ideas is intimidating or threatening or interferes with the free exercise or enjoyment by another of any Convention right or privilege on account of that person's race, these considerations cannot be disregarded even in the context of Articles 10 and 11.

67. In the instant case the impugned activities quite clearly targeted the Roma minority, which was supposedly responsible for "Gypsy criminality", and the Court is not convinced by the applicant's arguments that the intention of the dissolved entities was not the singling-out and intimidation of this vulnerable group (see *Horváth and Kiss v. Hungary*, no. 11146/11, § 102, 29 January 2013). In this connection the Court recognises the concerns of various international bodies (see paragraphs 26-28 above).

68. As the Court has already pointed out (see paragraph 57 above), in such circumstances the authorities could not be required to await further developments before intervening to secure the protection of the rights of others, since the Movement had taken concrete steps in public life to implement a policy incompatible with the standards of the Convention and democracy.

69. The Court considers that the intimidating character of the rallies in question is an overriding consideration, despite the fact that the actual assemblies were not banned by the authorities and no violent act or crime occurred. What matters is that the repeated organisation of the rallies (see

paragraph 15 above) was capable of intimidating others and therefore of affecting their rights, especially in view of the location of the parades. With regard to the dissolution of the Association, it is immaterial that the demonstrations, taken in isolation, were not illegal, and the Court is not called upon in the present case to determine to what extent the demonstrations amounted to exercise of the Convention right of assembly. It may be only in the light of the actual conduct of such demonstrations that the real nature and goals of an association become apparent. In the Court's view, organising a series of rallies allegedly in order to keep "Gypsy criminality" at bay by means of paramilitary parading can be regarded as implementing a policy of racial segregation. In fact, the intimidating marches can be seen as constituting the first steps in the realisation of a certain vision of "law and order" which is racist in essence.

The Court would point out in this context that if the right to freedom of assembly is repeatedly exercised by way of intimidating marches involving large groups, the State is entitled to take measures restricting the related right to freedom of association in so far as it is necessary to avert the danger which such large-scale intimidation represents for the functioning of democracy (see paragraph 54 above). Large-scale, coordinated intimidation – related to the advocacy of racially motivated policies which are incompatible with the fundamental values of democracy – may justify State interference with freedom of association, even within the narrow margin of appreciation applicable in the present case. The reason for this relates to the negative consequences which such intimidation has on the political will of the people. While the incidental advocacy of anti-democratic ideas is not sufficient in itself to justify banning a political party on the ground of compelling necessity (see paragraph 53 above), and even less so in the case of an association which cannot make use of the special status granted to political parties, the circumstances taken overall, and in particular any coordinated and planned actions, may constitute sufficient and relevant reasons for such a measure, especially where other potential forms of expression of otherwise shocking ideas are not directly affected (see paragraph 71 *in fine* below).

70. In view of the above considerations, the Court is convinced that the arguments adduced by the national authorities were relevant and sufficient to demonstrate that the impugned measure corresponded to a pressing social need.

71. The Court is aware that the disbanding of the Movement and the Association represented quite a drastic measure. However, it is satisfied that the authorities nevertheless chose the least intrusive – indeed, the only reasonable – course of action to deal with the issue. Moreover, it is to be noted that the domestic authorities had previously drawn the attention of the Association to the unlawful nature of the Movement's activities, a move which resulted only in formal compliance (see paragraph 9 above), to the

extent that further rallies took place during the ongoing proceedings (see paragraph 15 above – compare *S.H. and Others v. Austria* [GC], no. 57813/00, § 84, ECHR 2011). In the Court's view, the threat to the rights of others represented by the Movement's rallies could be effectively eliminated only by removing the organisational back-up of the Movement provided by the Association. Had the authorities acquiesced in the continued activities of the Movement and the Association by upholding their legal existence in the privileged form of an entity under the law on associations, the general public might have perceived this as legitimisation by the State of this menace. This would have enabled the Association, benefiting from the prerogatives of a legally registered entity, to continue to support the Movement, and the State would thereby have indirectly facilitated the orchestration of its campaign of rallies. Furthermore, the Court notes that no additional sanction was imposed on the Association or the Movement, or on their members, who were in no way prevented from continuing political activities in other forms (see, *a fortiori*, *Refah Partisi (the Welfare Party) and Others*, cited above, §§ 133-34). In these circumstances, the Court finds that the measure complained of was not disproportionate to the legitimate aims pursued.

72. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 11 of the Convention.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 9 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Stanley Naismith | Guido Raimondi |
| Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pinto de Albuquerque is annexed to this judgment.

G.RA.
S.H.N.

# CONCURRING OPINION OF JUDGE PINTO DE ALBUQUERQUE

The dissemination of anti-Gypsyism and anti-Semitism by legal persons and the means of reacting to them under the European Convention on Human Rights ("the Convention") are the core issues of the *Vona* case. I agree with the Chamber, but I am convinced that the case raises issues of crucial importance which should be addressed. That is the purpose of this opinion.

## The international obligation to criminalise the dissemination of racism

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[1] requires States Parties to criminalise six categories of racist misconduct: (i) the dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; (iv) incitement to such acts; (v) the financing of racist activities; and (vi) participation in organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination[2]. In addition, the ICERD requires States Parties to declare illegal and prohibit organisations which promote and incite racial discrimination, and to be vigilant in proceeding against such organisations at the earliest opportunity[3]. Since these obligations are mandatory[4], it does not suffice, for the purposes of Article 4 of the ICERD, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions[5].

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1. The ICERD was adopted on 21 December 1965, and has 176 parties, including Hungary.

2. According to the ICERD, the term "racial discrimination" means any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Thus, the universal definition does not make any difference between discrimination based on ethnicity and race.

3. See Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 15 (1993) on organised violence based on ethnic origin, §§ 3-6; General Recommendation No. 27 (2000): Discrimination against Roma, § 12; General Recommendation No. 30 (2004): Discrimination Against Non-Citizens, §§ 11-12; and General Recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, § 4.

4. See CERD General Recommendation No. 7 (1985): Legislation to eradicate racial discrimination (Art. 4), and General Recommendation No. 15 (1993), cited above, § 2.

5. See CERD Communication No. 34/2004, *Gelle v. Denmark*, 6 March 2006, § 7.3, and Communication No. 48/2010, *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, 4 April 2013, § 12.3.

Article 1§ 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid requires States Parties to criminalise apartheid, which includes acts committed by organisations, institutions and individuals for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them, such as the policies and practices of racial segregation and discrimination as practised by the former political regime of South Africa[6].

Under Article 7 § 1(h) of the 1998 Rome Statute of the International Criminal Court (ICC)[7], persecution against any identifiable group or community on political, racial, national, ethnic, cultural, religious, gender or other grounds is a crime against humanity subject to the jurisdiction of the ICC, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Acts of harassment, humiliation and psychological abuse of the members of a race, nationality or ethnic group may amount to persecution[8].

After the 2000 Charter of Fundamental Rights of the European Union prohibited discrimination on any ground such as race, colour, nationality, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, disability, age or sexual orientation, the European Union pursued the repression of the dissemination of racism by means of the 2008 Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law[9]. According to the Framework Decision, certain forms of conduct which are committed for a racist or xenophobic purpose, including, among others, public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin, are to be punishable as criminal offences. Member States must ensure that these crimes are punishable by effective, proportionate and dissuasive penalties, including terms of imprisonment of a maximum of at least one to three years for natural persons and criminal or non-criminal fines for legal persons. In addition, legal persons may be punished by

6. The Convention was adopted on 30 November 1973, and has 108 States Parties, including Hungary.

7. The Rome Statute has 122 States Parties, including Hungary.

8. See the *Einsatzgruppen Trial*, Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law no. 10, vol. IV, p. 435: "inciting of the population to abuse, maltreat, and slay their fellow citizens ... to stir up passion, hate, violence, and destruction among the people themselves, aims at breaking the moral backbone", and more recently, *Kvocka and Others*, IT-98-30/1-A, ICTY judgment of 28 February 2005, §§ 324-25.

9. The Framework Decision is a follow-up to the Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia.

exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from the practice of commercial activities, placement under judicial supervision or a judicial winding-up order.

Following the adoption of a general instrument to combat discrimination, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms[10], the Council of Europe established a specific instrument for the punishment of racist and xenophobic expression: the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems, such as the dissemination of racist and xenophobic material, racist and xenophobic motivated threat or insult, and denial, gross minimisation, approval or justification of genocide or crimes against humanity[11]. Previously, Committee of Ministers Recommendation No. R (97) 20 had already required governments to establish a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech, which covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. In addition, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe has, since its inception, addressed the activities of certain groups which have an openly anti-Roma and anti-Semitic discourse. In its very first General Policy Recommendation, ECRI suggested the criminalisation of any oral, written, audio-visual and other forms of expression, including the electronic media, inciting to hatred, discrimination or violence against racial, ethnic, national or religious groups or against their members on the ground that they belong to such a group, as well as the production, distribution and storage for distribution of the material in question. Criminal prosecution of offences of a racist or xenophobic nature should be given a high priority and be actively and consistently undertaken. ECRI further advised banning racist organisations where it is considered that this would contribute to the struggle against racism[12]. Noting that Roma

10. ETS no. 177, with 18 States Parties.

11. ETS no. 189, with 20 States Parties. For the purposes of this Protocol, racist and xenophobic material means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

12. ECRI General Policy Recommendation No. 1: Combating racism, xenophobia, anti-Semitism and intolerance, 4 October 1996. General Recommendation No. 7 on national legislation to combat racism and racial discrimination, 13 December 2002, enlarged the prohibition under criminal law to a wide range of acts, including public insults and defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, and provided for

suffer throughout Europe from persisting prejudices, ECRI has specifically recommended that States take the appropriate measures to ensure that justice is fully and promptly done in cases concerning violations of the fundamental rights of Roma[13]. More recently, on 1 February 2012, the Committee of Ministers adopted the "Declaration on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe"[14], expressing its deep concern about the rise of anti-Gypsyism, anti-Roma rhetoric and violent attacks against Roma, and calling on public authorities at all levels to conduct in a speedy and effective manner the necessary investigations of all crimes committed against Roma and identify any racist motives for such acts. The Committee also welcomed efforts to prevent and condemn extremist organisations inciting or committing such crimes.

In full coherence with these standards, the European Court of Human Rights ("the Court") has emphasised the vital importance of combating racial discrimination in all its forms and manifestations, including hate speech or speech aimed at discriminating against ethnic groups[15]. Furthermore, the Court has stated that racial violence is a particular affront to human dignity and requires special vigilance and a vigorous reaction from the authorities[16]. The vulnerability of the group against whom discrimination and violence takes place has been a factor in the Court's analysis: for example, the Court has established that people of Roma origin enjoy special protection under Article 14 of the Convention[17].

**Hence, States Parties to the Convention have the duty to criminalise speech or any other form of dissemination of racism, xenophobia or ethnic intolerance, to prohibit every assembly and dissolve every group, organisation, association or party that promotes them.** States have the

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the criminal liability of legal persons, which should come into play when the offence has been committed on behalf of the legal person by any persons, particularly acting as the organ of the legal person or as its representative. Criminal liability of a legal person should not exclude the criminal liability of natural persons. Legal persons or groups which promote racism should be prohibited, and if necessary, dissolved.

13. ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, 6 March 1998, and General Policy Recommendation No. 13: Combating anti-Gypsyism and discrimination against Roma, 24 June 2011.

14. The term "Roma" used by the Council of Europe refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies.

15. *Jersild v. Denmark*, 23 September 1994, § 30, Series A no. 298; *Soulas and Others v. France*, no. 15948/03, §§ 43-44, 10 July 2008; and *Féret v. Belgium*, no. 15615/07, §§ 69-71, 16 July 2009.

16. *Nachova and Others v Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII, and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII.

17. *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 181, ECHR 2007-IV; *Muñoz Diaz v. Spain*, no. 49151/07, § 60, ECHR 2009; and *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 44, ECHR 2012.

obligation not only to bring to justice the alleged offenders and empower the victims of racism with an active role in the criminal proceedings, but also to prevent private actors from committing or reiterating the offence. **Such an international positive obligation must be acknowledged, in view of the broad and long-lasting consensus mentioned above, as a principle of customary international law, binding on all States, and a peremptory norm with the effect that no other rule of international or national law may derogate from it**. Therefore, State tolerance of speech, expression or activities of any natural persons, assemblies, groups, organisations, associations or political parties whose purpose is to disseminate racism, xenophobia or ethnic intolerance represents a breach of the State Party's obligation.

**The dissolution of an association**

The dissolution of an association depends on the strict conditions set by Article 11 of the Convention, namely the pursuit of the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others. Moreover, the interference with freedom of association is only justified if it complies with a two-tier test: the test of necessity and the test of proportionality[18]. In particular, governments, public authorities and public officials must adhere strictly to the principle of content-neutrality when they interfere with freedom of association, refraining from banning associations or reserving different treatment to associations with whose actions or opinions they do not agree[19].

Normally, associations have multiple statutory goals, some being more important than others. Therefore, it is of the utmost importance to differentiate the primary goals – those without which the association would not have been founded – from the secondary goals, without which the association would have been founded, dissolution being appropriate only where the primary goal of the association is illegal. When an illegal statutory goal can be removed, dissolution is, in principle, not appropriate, and the domestic authorities should give preference to removal of the illegal goal from the deed of foundation[20].

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18. For a description of these two tests see my separate opinion in *Mouvement raëlien Suisse v. Switzerland* [GC], no. 16354/06, ECHR 2012; these considerations are applicable, *mutatis mutandis*, to freedom of association.

19. An example of the principle of freedom to create associations without any previous content-based control was established by the remarkable French Constitutional Council Decision no. 71-44 DC of 16 July 1971, which declared unconstitutional a procedure through which acknowledgment of an association's legal capacity depended on a preliminary verification by a judicial authority of its conformity with the law.

20. See my separate opinion in *Association Rhino and Others v. Switzerland*, no. 48848/07, 11 October 2011.

Nevertheless, an association's goals must be assessed according not only to its deed of foundation, but also to its practice. Sometimes the deed of foundation covers up an illegal practice. The deviation from the association's statutory goals may have occurred *ab initio* or during its subsequent activity. In any case, the statute of the association may not be used as a façade for the pursuit of these deviated goals[21]. Furthermore, the assessment of the association's practice must incorporate its "overall style" (*Gesamtstil*), meaning its symbols, uniforms, formations, salutes, chants and other modes of expression, since the full picture of the association's way of life can reveal an "essential family likeness" (*Wesensverwandschaft*) to other prohibited associations[22].

Associations are responsible for their leaders' and members' actions when these are related to the prosecution of the association's goals[23]. Liability may result from the direction, organisation, financing, or mere tolerance of unlawful actions by their members or third persons when they act on behalf of the association. The ultimate criterion for the imputation of responsibility for actions is the social perception that the association itself in any way participates in or tolerates unlawful actions[24].

Associations are organised social institutions, with sections, branches and movements. The dissolution of the association involves the cessation of all its activity, including that of its sections, branches or movements. Conversely, the dissolution of a "subsidiary" association may warrant the dissolution of the "parent" association, if the former was created or in any way supported by the latter. The same applies evidently to political parties. Different legal personalities must not work as a veil to cover up the essential bonds between associations and political parties which share the same political purposes and pursue the same strategies[25].

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21. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98 § 101, ECHR 2003-II, and *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia*, no. 74651/01, § 71, ECHR 2009. Also, German Federal Administrative Court judgments of 1 September 2010 (the *Heimattreue Deutsche Jugend* judgment) and 19 December 2012 (the *Hilfsorganisation für nationale politische Gefangene und den Angehörige* judgment).

22. German Federal Administrative Court judgments of 1 September 2010 and 19 December 2012, cited above, and Austrian Constitutional Court judgment of 16 March 2007.

23. See my separate opinion in *Mouvement raëlien Suisse*, cited above. Acts committed by the association's members in their private lives, outside the context of the association's activities, cannot be regarded as a relevant and sufficient reason for dissolving the association in question.

24. *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, § 88, ECHR 2009, on tacit support of terrorism.

25. For instance, patrolling, observing, following or in any way monitoring the movements of persons of a certain race or ethnic minority with the alleged purpose of maintaining public order (so-called militia or vigilante action) is certainly an inadmissible racist activity, which itself puts in danger public order and safety and the rights of third persons

Finally, the thorny question of the timing of the dissolution must be approached with extreme prudence in order to avoid, on the one hand, a precipitated action which would impair the exercise of basic freedoms, and on the other hand, a belated reaction to seriously dangerous conduct. Only when there is a clear and imminent danger to the interests protected under Article 11 § 2 may the association be dissolved[26].

**Racism in Hungarian society**

It is a fact established by various international monitoring institutions that anti-Roma and anti-Semitic forms of public expression are frequent in Hungarian public life. In its Fourth Report on Hungary, ECRI noted that "there has been a disturbing increase in racism and intolerance in public discourse in Hungary. ... [T]he sense is that the expression of anti-Semitic views is currently on the rise in Hungary"[27]. In its Third Opinion on Hungary, the Advisory Committee on the Framework Convention for the Protection of National Minorities found that "Hungary is currently facing a worrying rise in intolerance and racism, chiefly aimed at Roma"[28]. Subsequently, the Committee of Ministers approved a Resolution which determined that, "In recent years, the Roma have increasingly been victims of displays of intolerance, hostility and racially motivated violence. Hate speech and racism in public statements, and in certain media, is also increasing, which is of deep concern"[29]. Both the United Nations Human Rights Committee and the United Nations Committee against Torture expressed their concern at the virulent and widespread anti-Roma statements by public figures and the media as well as indications of rising anti-Semitism in Hungary[30], and at reports of a disproportionately high number of Roma in prisons and ill-treatment of and discrimination against Roma by those responsible for law enforcement[31]. In his report on Hungary, Githu Muigai, United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,

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and therefore warrants dissolution of the association that so acts and the political party that supports the association's activity.

26. *Refah Partisi (the Welfare Party) and Others*, cited above, § 104, and *Association of Citizens Radko & Paunkovski*, cited above, § 75. In my view, § 57 of the present judgment does not follow the *Refah Partisi* standard, since it admits dissolution before an imminent danger to the interests protected by Article 11 § 2 is proven.

27. Fourth report on Hungary, 24 February 2009, CRI(2009)3, §§ 60-74. The same worries had already been expressed in its Third report on Hungary, 8 June 2004, CRI(2004)25, §§ 58 and 79.

28. ACFC/OP/III(2010)001.

29. CM/ResCMN(2011)13 on the implementation of the Framework Convention for the Protection of National Minorities by Hungary, 6 July 2011.

30. CCPR/C/HUN/CO/5, 16 November 2010, § 18.

31. CAT/C/HUN/CO/4, 6 February 2007, § 19.

expressed deep concern at the growth of paramilitary organisations with racist platforms which target Roma[32].

In sum, racism is today a scourge in Hungarian society, the most vivid example being the fact that vigilante groups continue to hold marches in several villages, throwing objects at the houses of Roma, intimidating Roma residents, chanting anti-Roma slogans and making death threats[33].

**The assessment of the facts of the case under the European standard**

The present case is to be analysed in terms of the negative obligations arising from Article 11 of the Convention, since the impugned dissolution is a positive State act of interference with the Association's right to legal recognition. Moreover, the Association intended to intervene, and did intervene, in the political arena with a message aimed at defending ethnic Hungarians and their traditions, which are matters of general interest. The parades were not held in places or at times connected with traumatic episodes in the history of the respondent State[34]. Having in account these factors, the margin of appreciation of the State is narrow, the Court's supervision of the interference being particularly called for when freedom of association and assembly puts in question the human dignity and the security of a targeted group of persons.

**The proportionality test**

Now that the applicable assessment criteria have been clarified, the impugned interference must be examined in the light of the case as a whole in order to determine whether it is "proportionate to the legitimate aim pursued" and corresponds to a "pressing social need", that is to say whether the specific reasons given by the national authorities appear "relevant and sufficient".

In the case at hand the members of the Hungarian Guard Movement paraded throughout Hungary and called for the defence of ethnic Hungarians against "Gypsy criminality". Based on section 2 of Act no. II of 1989, as well as the international obligations of the respondent State, the domestic courts considered that these actions were discriminatory in essence, violated the right to liberty and security of the inhabitants of the

32. UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, 23 April 2012.

33. See, among recent descriptions of the situation made by independent institutions and NGOs, the Council of Europe Commissioner for Human Rights, in his 2012 report "Human rights of Roma and Travellers in Europe"; Amnesty International, in its 2011 and 2012 reports; and Human Rights Watch, in its 2013 report "Hungary's Alarming Climate of Intolerance".

34. See my separate opinion in *Fáber v. Hungary*, no. 40721/08, 24 July 2012.

villages and threatened public order. The domestic courts' reasons are relevant and sufficient.

As a matter of principle, any form of speech which separates the population into "us" and "them", where "them" represent a racial or ethnic group to whom negative characteristics and conduct are attributed, is incompatible with the Convention. The use of the expression "Gypsy crime", which suggests that there is a link between crime and a certain ethnicity, constitutes a racist form of speech intended to fuel feelings of hatred against the targeted ethnic group. This expression reflects a clearly divided view of society into "them", the Roma, perpetrators of crimes, and "us", the "ethnic" Hungarians, the victims of their crimes. Such sweeping generalisations attributing negative behaviour and characteristics are made solely on the basis of the target group's origin and ethnicity. Intolerance and prejudice towards Roma are objectively fanned by statements of this nature. The same can be said for the anti-Semitic utterances made in the parades.

Moreover, the domestic courts considered that the Hungarian Guard Movement was a façade of the applicant Association, since the latter had founded, governed and financed the former. Thus, the domestic courts found that the actions of the Movement should be attributed to the applicant Association. Here, again the domestic courts' reasons were relevant and sufficient.

In fact, the criminalisation of racist speech and expression, the prohibition of assemblies and the dissolution of associations promoting racism are compatible with freedom of expression, assembly and association. Articles 10 and 11 of the Convention must be interpreted so as to be reconcilable with the customary and peremptory international obligation mentioned above. A holistic approach to these freedoms is called for under international human rights law, especially with regard to the applicable restrictions[35]. The exercise of freedom of expression carries special duties, specified in Article 29 § 2 of the Universal Declaration of Human Rights (UDHR), among which the obligation not to disseminate racist ideas is of particular importance, and Article 20 § 2 of the International Covenant on Civil and Political Rights (ICCPR), according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law[36]. This prohibition is valid not only for racist expression[37], but also for

35. *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 42, *Reports of Judgments and Decisions* 1998-I; *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202; and *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 57, Series A no. 44.

36. CERD General Recommendation No. 15 (1993), cited above, § 4; *Saada Mohamad Adan v. Denmark*, Communication No. 43/2008, 13 August 2010, § 7.6, and Communication No. 48/2010, cited above, § 12.7; *Faurisson v. France*, Communication No. 550/1993, UN Doc. CCPR/C/58/D.550.1993(1996), § 9.6; and *Ross v. Canada*, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997, § 11.5-11.8.

assemblies or associations which promote racism[38]. In some cases, the dissemination of racism through speech, assembly or association may even be instrumental in the 'destruction of rights', warranting the application of the provisions contained in Article 30 of the UDHR, Article 5 of the ICCPR and Article 17 of the Convention[39].

The context of a political debate is evidently irrelevant for the racist nature of speech, assembly or association[40]. Even in this case, freedom of expression, assembly and association must yield to human dignity and the rights of persons whose race, nationality or ethnic origin is attacked. As time went by, it became apparent that the activities of the Association presented a clear and imminent danger to public order and the rights of third persons[41]. Thus, dissolution was a proportionate measure in the face of the Association's rhetoric and activities, which denied the affected persons the right to respect as human beings and jeopardised their safety and public order.

**The test of necessity**

Dissolution of an association is the ultimate measure (*ultimum remedium*) taken against a legal person. Before resorting to that drastic measure, the State must envisage other, less intrusive measures, such as prohibiting assemblies, withdrawing public benefits and placement under judicial supervision. In the case before us, the domestic authorities did give the Association an opportunity to mend its ways and make its practice conform to its statute and the law. Yet the Association did not take this

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37. For example, when statements depict foreigners or Roma as inferior, through the generalised attribution of socially unacceptable behaviour or characteristics, freedom of expression cannot prevail over human dignity (German Federal Constitutional Court, decision of 4 February 2010).

38. For example, participants in public assemblies whose advocacy of national, racial or religious hostility constitutes incitement to discrimination, hatred or violence forfeit the protection of their right to freedom of expression under the Convention (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 4 June 2010, § 96).

39. With regard to Article 10 of the Convention and Article 3 of Protocol No. 1, see *Glimmerveen and Hagenbeek v. the Netherlands*, nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, Decisions and Reports 18, p. 187; *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-IX; *Witzsch v. Germany* (dec.), no. 7485/03, 13 December 2005; and *Lehideux and Isorni v. France*, 23 September 1998, §§ 47 and 53, *Reports* 1998-VII; and with regard to Article 11, *W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII; and *Kasymakhunov and Saybatalov v. Russia*, nos. 26261/05 and 26377/06, § 113, 14 March 2013.

40. *Féret*, cited above,, §§ 75-76. See also CERD Communication No. 34/2004, cited above, § 7.5; Communication No. 43/2008, cited above, § 7.6, and Communication No. 48/2010, cited above, § 8.4.

41. Referring to such danger, the Hungarian Supreme Court mentioned, in its judgment of 15 December 2009, among others, the events in Fadd on 21 June 2008, and the escalation of threatening declarations exchanged between the association's members and some Roma.

opportunity; rather, it repeated its unlawful activities, paving the way for a more severe reaction of the domestic authorities. There is therefore no contradiction between the dissolution of the Association and the official tolerance of its parades during a certain period of time. Once that trial period had passed, the dissolution of the Association was the only adequate means to react to the danger it represented to the rights of third persons and public order.

**Conclusion**

"The Roma are what we strive to be: real Europeans", Günter Grass once said. The Association's racist goals and activities ignored that lesson. Having regard to the State's obligation to criminalise the dissemination of racism, xenophobia or ethnic intolerance, prohibit every assembly and dissolve every group, organisation, association or party that promotes them, to the difference between the Association's statutory purposes and its practice, and to the existence of a clear and imminent danger resulting from its speech and activities, and after examining the decisions given by the competent authorities in the light of the narrow margin of appreciation applicable to the case, I conclude that the reasons on which the impugned dissolution was based were relevant and sufficient and that the interference did correspond to a pressing social need.