



Mere display in public of a controversial flag could not justify restrictions on freedom of expression

In today's Chamber judgment in the case of [Fáber v. Hungary](#) (application no. 40721/08), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned Mr Fáber's complaint that he was fined for displaying the striped Árpád flag, which has controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred.

The Court found that the applicant, who had not behaved violently or abusively and had not posed a threat to public order, should not have been sanctioned for merely displaying the Árpád flag.

Principal facts

The applicant, Károly Fáber, is a Hungarian national who was born in 1969 and lives in Budapest (Hungary).

On 9 May 2007, Mr Fáber displayed a flag, the striped Árpád flag which has controversial historical connotations, less than 100 metres away from a demonstration taking place against racism and hatred. The event was organised by a socialist political group on the spot where many Jews were exterminated during the 1944/45 Arrow Cross regime (the Hungarian equivalent of the National Socialist Party).

In the vicinity of that event on the same day and at the same time, supporters of a right-wing political party had gathered to counter-demonstrate. There are claims that the Árpád stripes have fascist connotations and that the Arrow Cross Party used a similar symbol for their flag in the 1940s.

Mr Fáber was fined in May 2007 for having disobeyed the police's request to either remove the flag or leave the demonstrations. He appealed unsuccessfully before the Hungarian courts which found in particular that he had behaved provocatively. The courts concluded that he could not rely on his right to free expression to justify his disruptive behaviour which, offensive to many, had been likely to cause unrest and thus endanger public order,

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying in particular on Article 10 and Article 11 (freedom assembly and association), Mr Fábér complained that he had been prosecuted for trying to express his political opinion during a peaceful gathering.

The application was lodged with the European Court of Human Rights on 12 August 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Dragoljub **Popović** (Serbia),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Right to free expression \(Article 10\) in connection with Article 11 \(freedom of assembly\)](#)

The Court first recalled that freedom of expression was one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. It then emphasised that there was little scope for restrictions on political speech or debates on questions of public interest, and the need for any such restriction had to be convincingly established.

Furthermore, even demonstrations which might annoy or offend people were protected under Article 11 (freedom of assembly). However shocking or disturbing certain views or words used during demonstrations might appear to the authorities, democracy might be endangered if they restricted people's freedom to assemble or to express their ideas, other than in cases of incitement to violence or rejection of democratic principles.

The flag which Mr Fábér had displayed had been perceived as provocative by the authorities. While it might have made the demonstrators feel ill-at-ease, the flag had not really disturbed the event. The Court accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression.

In addition, Mr Fábér had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining Mr Fábér for refusing to take down the Árpád flag. The mere display of that flag did not disturb public order or hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.

Finally, the Court did not exclude that the display of a contextually ambiguous symbol at the specific site of mass murders could express identification with the perpetrators of those crimes. Because of that, it recalled that not all shocking or disturbing expression,

which might be protected in certain circumstances, was permissible in all places and at all times. The need to protect the rights of the murdered and their relatives could necessitate an interference by the authorities with the right to freedom of expression. Interference therefore might be legitimate when shocking or disturbing expression, because of its timing and place, amounted to the glorification of war crimes, crimes against humanity or genocide. Moreover, where individuals expressed contempt for the victims of a totalitarian regime as such, that could amount – in application of Article 17 of the Convention – to an abuse of Convention rights.

However, the Court was satisfied that in Mr Fábér's case no such abusive element could be identified. It concluded that there had, therefore, been a violation of Article 10 read in the light of Article 11.

Separate opinions

Judge Keller expressed a dissenting opinion and judge Popović, joined by judge Berro-Lefèvre, expressed a concurring opinion. Judge Pinto de Albuquerque expressed a separate concurring opinion. The texts of these opinions are annexed to the judgment.

Just satisfaction (Article 41)

The court held that Hungary was to pay Mr Faber 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.